Postdramatic Legal Theatres: Space, Body, Media and Genre

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Introduction: Law's Theatricality Under Pressure

1. A courtroom suicide: On the vulnerability of legal theatre

On December 31, 2017, after 24 years of investigations and prosecutions, the International Criminal Tribunal for the former Yugoslavia (ICTY) was formally dissolved. The Tribunal, which was established with the intention to prosecute war crimes that took place during the conflicts in the Balkans in the 1990s, had been mandated by the United Nations to start its proceedings in 1993, while the Yugoslav wars were still unfolding. It was scheduled to hold its last hearings in November 2017, leaving the few remaining appeal procedures to the UN residual mechanism for criminal tribunals. The ICTY had proved to be a crucial institution in the development of the legal question of individual responsibilities for what are called 'international crimes': war crimes, genocide, and crimes against humanity. Although critical debates on the Tribunal's successes and shortcomings are ongoing,[1] its positive reception in the sphere of public international organizations contributed to the decision to establish a more permanent institution of international criminal law, the International Criminal Court, which was founded in 2002, and is officially seated in The Hague.[2]

While international media had already started publishing reflections on the ICTY's legacy in the final week of hearings in late November 2017, the Tribunal was confronted with an unexpected event. It concerned a case that was to be the very last hearing the Tribunal would conduct – the judgment pronouncement in the appeals case of Slobodan Praljak (officially captured as 'Praljak et al.', as his appeal included three accused companions, namely Milivoj Petkovic, Valentin Ćorić, and Berislav Pušić). Praljak was a former Bosnian Croat general accused of grave breaches of the Geneva Conventions, of violations of the customs of war, and of crimes against humanity. During the hearing, seconds after the judge announced his decision to reject Praljak's appeal and uphold his 20-year prison sentence, the former general publicly committed suicide, live, in court, by drinking poison.

If it hadn't been for Praljak's unexpected act, the highlight of the closing hearings would surely have been the sentencing of Ratko Mladić, a Bosnian Serbian military commander also known as 'the Butcher of Bosnia', who was accused and found guilty of war

[1] See Zwart et al., and Stahn et al., amongst others.

[2] Crawford in Sands (145) and Booth in Sands (159).

crimes, crimes against humanity, and genocide, especially in relation to the Srebrenica massacre. His case was considered one of the Tribunal's most important successes, and the hearing was broadcast in full on Dutch television on 22 November 2017 in the Tribunal's penultimate week of hearings. The case ended up making for some impressive 'Court TV' when Mladić misbehaved in court during the reading of the verdict. However, it was this image from the much less-high profiled Praljak case that ended up dominating news reports about the Tribunal's final weeks. One image in particular will not have escaped anyone checking any kind of news service around 29 November 2017: a screenshot taken from the court's live video stream that shows Praljak, mouth wide open, about to raise something to his lips.

Source: www.nos.nl/artikel/2205257-om-gifresten-gevonden-in-glaasje-dat-praljak-leegdronk.html

Seconds after the judge announced his verdict, Praljak exclaimed "Judges, Slobodan Praljak is not a war criminal. With disdain, I reject your verdict!" and then swallowed a vial of potassium cyanide. He died later that day, in a hospital in The Hague, from the consequences.

Most YouTube videos that show the act are edits of reports by various news agencies. They begin with the last sentences of the judge's verdict, which show Praljak standing up in court to receive it. After the judge finishes pronouncing his judgment, he asks Praljak to be seated. Instead of complying, Praljak makes his statement and drinks the contents of the vial.

The act is followed by some commotion in the courtroom, and then by the judge's call to "please, close the curtains" ("War Crimes Suspect Slobodan Praljak," YouTube). Although no curtains are visible on the video recordings of the Praljak hearing – as the courtroom cameras are positioned so that the space in which the audience is seated is never captured – it is generally known that the audience attending ICTY hearings was separated from the courtroom by glass windows, and those glass windows could, in turn, be covered with curtains. Ratko Mladić's misbehavior, a week earlier, had led the judge to order his removal from the Courtroom, and thus from the audience's sight. After a brief adjournment, during which the live stream was paused, the hearing was reconvened and the verdict was read in the appellant's absence, by means of which the court displayed its ability to control the situation. Praljak's act, however, incited the judge to not only adjourn the hearing and pause or suspend the live stream, but to *veil*, to *screen off*, the entire courtroom, barring the view of the audience that was present, live, in court. Something about the very nature of the courtroom, it appears, had to be shielded from the public eye. What could that have been?

The Praljak case, I hold, indicates some significant tensions with regard to the public nature of law in the context of contemporary developments in both the legal and the cultural sphere. Trials have always been characterized by a specific dynamic between openness and closure.[3] Courthouses are open to the public, although large parts of them are not meant for public visitation. Courtrooms are accessible, yet the spaces from which judges and defendants enter courtrooms are generally not. Trials, of course, are public events, and have been so throughout history, but they aren't *entirely* public. Certain sensitive cases may proceed behind closed doors, or sensitive parts of cases, for example when they deal with matters considered to be of national security, or for the sake of protecting a party's privacy. When the public *is* allowed in, the number of seats in any courtroom is always limited. Some cases will be recorded by the media or even broadcast live, in audio or video format; in others, only certain forms of media will be allowed in. For instance, cameras are not always allowed, but courtroom drawings and written reportage are most of the time. Furthermore, testimonies and pieces of evidence appear publicly in court, but they may sometimes only be released to a wider public, outside of the court, after a verdict has been reached; before their release they can only be reported on in writing or drawn by courtroom sketchers. Besides, strict formal rules regulate *how* evidence appears: witnesses must keep to certain procedural rules, as must

[3] See Korsten, "Öffentlichkeit," on the public nature of law in terms of the play between visibility and invisibility, spaces open and closed to the public, in the European and Anglo- American criminal law traditions. In section two of this introduction I present an overview of theorizations of law's theatricality.

any other form of evidence. The same goes for the public and media attending a trial; judges may regulate their appearance through so-called 'Courtroom Conduct Orders,' and decide that audience members transgressing such an order may be removed from the courtroom. Trials, in other words, are open, but their openness is always regulated, managed, controlled, by the law, by legal officials. The openness and closure of courts has always been carefully balanced out.

In the case of Praljak's courtroom suicide, however, the law, the legal officials, lost their grip on the balance between openness and closure in that trial. The judge's decision to immediately close the courtroom's curtains is telling: curtains are a classical device in theatre. Opening them traditionally announces the beginning of a play; closing them announces its end. The device regulates the public's access to whatever takes place on stage in terms of space and time. Traditionally, in the theatre, people come together to watch, publicly, what is shown on stage. Audiences wait for the beginning, when the curtains open, and are made to accept the ending when they close. In between, they are generally subjected to a directed affair; a drama performed by actors. The seating area for the audience and space of the stage are separated from each other. Acts that do not strictly belong to the *diegesis* of the staged drama, but are more 'paratextual,' to speak in terms of Gérard Genette's narratology, such as the changing of the décor pieces, or switching props, take place behind closed curtains, so as to maintain the suspension of disbelief necessary for the sustenance of a fictional universe.[4]

In Praljak's case, the curtains were made to come down slightly too late. Praljak's act had already made apparent something about the courtroom space and the trial proceeding in which it took place that did not follow the traditional theatrical logic entirely. The closing of the curtains still signaled that the courtroom space is *theatrical*, or that proceedings are staged. Yet, secondly, the theatre, or its stage, also appeared to be *vulnerable*, in that it could be taken over by an altogether different kind of performance that, although it took place in the legal theatre, wasn't completely of the order of the juridical or the traditional theatrical, and had the effect of undermining both the theatrical frame and the juridical order staged in it.

That disturbance pertained, first of all, to the *spatial* set-up of the proceeding. Any theatre, as well as any court, needs to be established as such, and in order to do that, they need to present a significant difference between inside and outside. Above, I already briefly reflected on the theatrical device of curtains, and the ritual of opening and closing them to separate the stage from the audience, as a traditional device of demarcating the difference

[4] See Genette for the concept of paratext, which is most often discussed in relation to books.

between the space of play, of representation, and the space outside of it. In *Homo Ludens*, Johan Huizinga famously points out that any instance of play occurs "within its own proper boundaries of time and space" (13), in a "consecrated spot" that is "marked off beforehand" (10). In relation to that, the very word "court" etymologically derives from the Latin *cors* or *cohors*, which means an enclosed yard (a point to which I will return in chapter 1); and for Huizinga the "court of justice," too, is a "play-ground" a "magic circle" (10 and 77).

Theater scholar Richard Schechner, who comments on Huizinga's work, also remarks on the sacred space of play as the foundation of the practice of theater, a practice that for him, too, includes courtroom trials (176). In the chapter entitled "Toward a Poetics of Performance," in *Performance Theory*, Schechner comments on "the pattern of gathering, performing, and dispersing" that comes about, naturally, according to him, for example, after the occurrence of an accident:

> An accident happens, or is caused to happen (as in guerrilla theater); a crowd gathers to see what's going on. *The crowd makes a circle around the event* or, as in the case of accidents, around the aftermath of the event. Talk in the crowd is about what happened, to whom, why; this talk is largely interrogative: like dramas and courtroom trials, which are formal versions of the street accident, the event itself is absorbed into the action of reconstructing what took place. In trials this is done verbally, in theater analogically: by doing again what happened (actually, fictionally, mythically, religiously). (176, my italics)

Both figuratively and literally, the courtroom provides the space in which a crowd, a public, can make a "circle" around an event that has occurred, so as to represent it there in the form of a verbal reconstruction.

But such a space of representation is constructed *after* an event. Schechner stresses that "it is *not* the accident itself that gathers and keeps an audience," but its "reconstruction or reenactment" (176-177). Indeed,

> [t]otally unmanageable occurrences – a falling wall, sudden gunfire – *scatters people*; only after the wall has fallen or when the shooting stops does the crowd gather to make the theater. (177)

This kind of "totally unmanageable occurrence," I propose, is what happened in the case of Praljak's courtroom suicide. The space arranged and invested for the sake of the reenactment of events that had taken place during the Bosnian war became the site of an occurrence that had the effect of 'scattering' people, in a literal and figurative sense: literal in that people dispersed as a result of it, getting up from their chairs, walking around the courtroom, and, in the case of the audience, possibly being made to leave the building altogether, and figurative in that they were left confused. This scattering thus disturbed the production of the sense of "social solidarity" that "performance spaces" are intent on (*Performance Theory* 14). What Praljak's act made clear, in short, was that the demarcation of space, the enclosure, in the case of the ICTY's courtroom proceedings, was plagued by an openness that was not purposely arranged or completely taken into account by the Tribunal, namely, the potential to shatter the court's installation of a "magic circle" and thus undermine its ability to preserve its sacred power therein.

This openness was brought on, secondly, by the specific *medial set-up* of the hearing, with the 'live stream' broadcasting of the judgment pronouncement.[5] Most of the ICTY's procedures were broadcast with a 30-minute delay that allowed for editing, such as the blurring of the faces of certain witnesses, which makes editing an equivalent of the drawing of curtains in the theater. This work is done by an audio-visual director seated in a studio-like setting adjacent to the courtroom, who controls the courtroom's six cameras, as in a television studio, and who zooms and pans them.

[5] See "Statement on the Independent Review Regarding the Passing of Slobodan Praljak".

Source: www.icty.org/en/about/registry/courtroom-technology

But judgment pronouncements were always broadcast *live*, with no director in control of the mediation, no potential to edit the footage. Praljak was clearly aware that his act would be broadcast live as well, in a way that circumvented the director's ability to edit the events out of the live stream, thus undermining the Tribunal's potential to control the public's perception of the hearing through its control of media representation. If the broadcasting of a live judgment pronouncement was an 'event' for the ICTY, Praljak took over the show, bending the medium of broadcasting his way.

Praljak's act disturbed the court's control over its public nature in a third way that relates to the *genre of drama*. From the Greek word *dran*, 'to act,' drama implies acting, but in a specific way that Schechner has called "twice behaved behavior," in that an act in the theatre is never enacted "for the first time" (*Between Theater & Anthropology* 36). Acts in theatre are always scripted, representational, and so they are in courtrooms. Each of the participants in the courtroom hearing is supposed to act according to a script. In court, as in theatre, the self acts "in/as another," as Schechner puts it, namely "the social or transindividual self" that, he states, "is a role" (*Between Theater & Anthropology* 36). With his act, Praljak broke with the role he was supposed to play, with that of his "social" self *qua* subject to the law that was being spoken in the ICTY's courtroom. Instead of subjecting himself to the power of the court, Praljak sovereignly took power over his own life by killing himself, and he did so as a representative of a particular political community that named him a "martyr" for it (Pulse). In doing so he in a way placed himself, and the political community he

represented, outside of the law he was made to face in the Tribunal and rejected the social role it demanded him to play.

In so far as Praljak's deadly act also implied the removal of his body, a body the Tribunal needed to have *alive* to be able to enforce the 20-year prison sentence Praljak was supposed to serve, and consequently, a body the court needed to have alive so as to manifest its power, he pointed out another vulnerable aspect of legal theatre. As such, and fourthly, Praljak's act also emphasized that despite the representational nature of the 'play' that takes place in the public courtroom drama, the hearing also involves a *corporeality*; in other words, it emphasized the real, living body of the actor behind the mask of *mimesis*, of his or her 'role'. Despite the symbolic, political implications of Praljak's suicide, which was addressed, partly, to his still existing political following in the former Yugoslavia, his act transgressed the *mimetic* nature of drama. The suicidal act is precisely the act that cannot be dramatic in that it defies reenactment by its very nature; it is only ever "behaved" once, and absolutely so.[6]

In these four ways – spatially, medially, generically, and corporeally – Praljak's act presented something of the order of what Schechner, in the citation above, called an "accident." A theatre may be formed afterwards so as to reconstruct the event and make public sense of what happened, but as it occurred in a setting that was theatrical to begin with, Praljak's act had the effect of pointing out that theatre's inability to completely control the process of representation for which it was set up. Indeed, the event of Praljak's courtroom suicide goes to show that the traditional juridical theatre, and the possibilities its form offers for a court or tribunal to control the dynamic between openness and closure in the courtroom, has its limits. Although vulnerability may be structurally part of juridical theatre, the fault lines Praljak's act laid bare in its representational potential are also timely: they were an effect of the new mode of mediation of the live stream, for example, and of the confusion of 'roles,' an essential category of the genre conventions of drama, brought on by the specific jurisdictional make-up of international criminal law as it was developed in the late twentieth century to bring state representatives to justice. Furthermore, Praljak's act had a critical effect on the perception of the legitimacy of the ICTY as an institution because of the way in which it undermined, 'scattered,' the Tribunal's show of power.

[6] The effect reminds of Marina Abramovic's performance *Rhythm 0*, a six-hour long performance in which the artist invited the audience to do whatever they wished with an assortment of objects she had placed on a table in front of her. Among those objects was a gun loaded with one bullet; when a member of the audience placed the gun against the artist's temple and her finger around the trigger, the reality of her body came to be at stake. At that point in the performance a fight broke out among the audience, leaving it, literally and figuratively 'scattered'.

In this dissertation, I take the event of Praljak's courtroom suicide as a call to consider how different contemporary challenges to the traditional theatrical form of law render that theatre vulnerable, which, I propose, is crucial to understanding the ways in which law is able to uphold its power, its representational capacity, and thus its ability to produce a sense of social solidarity, as Schechner put it, in our time.

2. *Traditional theorizations of the relation between law and theatre: Psychoanalysis, cultural history, and political theory*

This dissertation starts from the premise that law is theatrical and should be studied as such. In order to understand the challenges produced by different kinds of contemporary pressures on that theatricality, I will first consider received conceptualizations of the fundamental relationship between law and theatre. That relationship has been pointed out by many scholars with different backgrounds, such as more humanities-oriented legal scholars, as well as scholars from fields like art history, comparative literature, and political theory. But although the theatre comparison is always telling, it is not always clear precisely what is meant by it, or, it is always made to mean in different ways. Because a complete overview of all scholarly work that draws on the comparison would take up too much space in this dissertation, I present an overview of theorizations of the theatricality of law by categorizing them into three main tenets: 1) a *psychoanalytical* understanding of the relation between theatre, or theatricality, and law; 2) a *cultural historical* understanding of this relation; and 3) a *political theoretical* understanding of it. I will present some of the most influential work that has been done in each of these fields so as to sketch how the relation between law and theatre has been conceived in scholarship thus far in these three ways.

From the field of law, one of the most influential psychoanalytical understandings of the relation between theatre, or theatricality, and law, is developed by legal historian Pierre Legendre. Legendre's work has focused on the history of juridical concepts and on the very idea of institutions; he famously compares the law, as an institution, to the church and to the family, *and* considers all of these institutions in terms of theatricality (see "*Id Efficit, Quod Figurat*"). Legendre's theatrical conceptualization of law is based on a notion that is fundamental to his work: the notion of *le tiers*, or 'the Third.' For Legendre, societies are organized through the 'Third,' the "institution" of language, which produces "normative effects" (*Law and the Unconscious* 144). With reference to psychoanalytic theory, Legendre postulates that language allows for, or underpins, representation, or "symbolization," i.e. the production of discourse which mediates between the subject, the self, and the "absent"

objects, others, from which he or she is structurally "separated," so as to allow for social bonds (*Law and the Unconscious* 146). Consequently, the logic of language, the "linguistic Third," Legendre argues, is "constitutive of a system of legality," and it is what underpins the modern State as a social form (*Law and the Unconscious* 148-149). This Third, which Legendre also calls "Reference," is what gives a particular order the "*status of legitimacy*," in that it distributes social roles and positions, "the order of places," and thus allows for acting "'in the Name of'," or what Legendre calls "the token of office" (*Law and the Unconscious* 178, italics in original).[7] It allows, for example, for the institution of judges. In modern times, it is what constitutes the State as a specific form of social order.

Importantly, this 'Third,' language, or 'Reference' is something that is "theatrically staged," write the editors of *Law and the Unconscious*, for example "as God or emperor, as constitution or people, as sovereign or parliament," all figures of "social presence" that "refer to an absolute which cannot be either seen or directly known," i.e. an absolute and absolutely absent Other or Object (*Law and the Unconscious* 261). Law, Legendre writes in an essay entitled, "The Dance of Law," requires the "use of deception and of masks" to consolidate its power (*Law and the Unconscious* 38). Its "theatre," he writes, is "directed exclusively to making us take up our partner and enter into the dance of absolute power" (*Law and the Unconscious* 38). This dance requires "the policing of choreographic aesthetics," which is why, Legendre suggests, in Western society dance and other forms of performance primarily take the form of a "spectacle" enacted by professionals, "specialist dancers," from which "the ordinary subject" is kept apart as "one who looks," i.e. a spectator (*Law and the Unconscious* 47-48). This staging of the 'dance of law' occurs so as to produce subjective attachment to the law (*Law and the Unconscious* 24, 32 and 35); in other words: (legal) subjectivity is the product of the theatricality of law.

Legendre's language-based understanding of the trial as a form of legal theatre derives from his work on the logic of reference, or the 'Third,' and he develops this theory in, for instance, his book on the case of Denis Lortie, *Le Crime du Caporal Lortie: Traité sur la père* (1989). Legendre defines a crime as an act that breaches the symbolic order that forms the basis of a given society, and, more specifically, as an act that has caused a subject to have fallen out of language, out of the symbolic order, out of his or her subjectivity.[8] He then constructs the trial as a scene in which a process of verbalization takes place in which the

[7] For a glossary entrance on Legendre's term "Reference" and its relation to "legitimacy" see *Law and the Unconscious* 260.
[8] My understanding of this aspect of Legendre's work is based on Vismann's essay "'*Rejouer les crimes*, Theatre v. Video'," see 122-124 specifically.

disassociated act can be translated back into language, i.e. can be symbolized, so that it can be judged. Through judgment, then, the fallen subject can be put back in place, and the broken symbolic order can subsequently be repaired. Legendre defines this process of verbalization by theatrical terms such as "dramatization" (*mise en scène*) and "ritualization" (*une ritualisation*) (*Le Crime* 80). Theatricality, of the law as such and of the trial, thus indicates the process of symbolization that allows for the representation of the Third, the element that institutes and constitutes any social order, i.e. it is the device by means of which the negativity that underpins law can be covered over so that ordinary subjects can attach to it and assume their subject positions in relation to it.

Legendre's work has been taken up by the German scholar of law and media, Cornelia Vismann, who wrote an influential essay entitled, "'*Rejouer les crimes*': Theatre v. Video," in which, in line with the German tradition of media theory, she proceeded to read Legendre's theatrical conceptualization of the trial as a reflection on media. In the distinction Vismann sets up between the media of theatre and video in her analysis of Legendre's reading of the trial of Denis Lortie, Vismann, too, emphasizes the linguistic nature of the trial. She argues that a medium like video, when introduced as a form of evidence, can have the effect of undermining or disturbing the process of dramatization, of translating a past crime into present, first-person speech, that law needs so as to reinstall a fallen subject and repair a broken order ("Rejouer" 131). Based on Legendre's comparison of law and language, Vismann thus shows that law's force, its ability to constitute society, as it manifests itself in the trial, is a force that works through *discourse*, i.e. spoken language. In her essay, Vismann refers to the Anglo-American tradition of speech-act theory, based on the work of John Langshaw Austin. In *How To Do Things With Words*, Austin proposed the concept of the performative nature of language, a concept that has been picked up in subsequent scholarship to comment on the constitutive effect language bears for subjectivity. It presents another way to emphasize the theatrical, constitutive nature of the relation between language and subjectivity.[9]

Some of Legendre's work has been translated into English by Peter Goodrich, an English legal scholar working at New York's Cardozo School of Law, who was involved in the Critical Legal Studies movement, who founded the journal *Law and Literature*, and for whom Legendre's work has been an important source of influence. For Goodrich, however,

[9] See, for example, Butler, *Excitable Speech: A Politics of the Performative*; Derrida, "Signature, Event, Context" and "Force of Law"; and Felman, *The Scandal of the Speaking Body*.

the legal theatre is not primarily a linguistic phenomenon, a scene of verbalization; rather, he emphasizes its *visual* nature. Throughout his career, and inspired by the French philosopher Jacques Derrida's book, *Of Grammatology*, Goodrich has battled a traditional understanding of the legal sphere as one based solely on language, and primarily written language, to emphasize its reliance on vision and the visual (see "Europe in America" 2035). Goodrich time and again points out that the focus of lawyers and legal scholars on 'black letters' mistakenly distinguishes writing from images. Letters, Goodrich argues, in that they are "typefaced," are always already pictorial, figurative, and thus of the nature of the image (*Obiter Depicta* 14). With reference to the work of Sigmund Freud, Goodrich points out that *images*, rather than words-as-such, are what get us "in the mood for law," that subject us to law, but in a way that is slightly beyond our conscious control or awareness (*Obiter Depicta* 7). Because they work unconsciously, we need to be trained in reading them, to understand their power, Goodrich argues. The legal theatre, dressed up in robes, wigs, neo-classical architecture, and solemn typefaces, is to be analyzed for what Goodrich calls its "visiocracy", the way it mediates power visually (*Obiter Depicta* 16).[10]

Since the 1980s, law has also proven to be a consistent source of objects of analysis in the field of comparative literature, which has delivered work on topics spanning from the rhetorics of confession to work on the poetic nature of personhood.[11] In her book, *The Juridical Unconscious*, the American literary scholar Shoshana Felman also considers law in terms of theatricality, by studying trials in the psychoanalytic terms of trauma theory. If Goodrich is interested in the visual for its potential to constitute subjects, to subject people to legal power, Felman is interested in the role images play in trials to chart the limits of what can be represented in them, and consequently, what can be judged on the basis of them. Trials are about trauma, she proposes in her book, and when trials become public events that are widely reported on, such as the trials she considers in her book, this is usually because a collective, cultural trauma plays its part in it (*The Juridical Unconscious* 4). In her chapter, "Forms of Judicial Blindness, or the Evidence of What Cannot Be Seen," Felman "cross-reads" the infamous trial of O.J. Simpson with Tolstoy's short story, "The Kreuzer Sonata," to

[10] At the same time, and throughout his work, Goodrich also reads law's exclusion of this theatrical, visual, affective dimension of its practice as the sign of its repression of minorities, the 'others' of the dominant, in terms of gender, sexuality, race, etc. Attention to the 'other' dimension of law then subsequently has the effect of attending to those forms of life that are otherwise excluded from the hegemonic order, an important impetus of the scholarly tradition that has become known under the name of 'Critical Legal Studies'. See Goodrich's *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (1996). For overviews of the Critical Legal Studies movement, see Hunt, Kennedy and Klare, and Douzinas and Perrin, amongst many others.

[11] See Brooks and Johnson, respectively, for their books on these topics.

present an argument on our cultural blindness to visual evidence of (the trauma of) domestic violence. Felman cites the famous dictum that "justice must not only be done, but must be *seen* to be done," to comment on the trial's nature as a "theatrical event," that "takes place upon a stage before an audience," a theatricality of which the O.J. Simpson trial was exemplary, because it was a "*show trial*" (80-81, italics in original). Given the status of visual evidence and eyewitnesses in trials, Felman argues that trials are "contingent on the act of seeing" (81), i.e. on the spectatorship that is constitutive of any theatre. In that theatre, trauma manifests itself visually as "what cannot be seen".

However, Felman also reads the trial as a scene of verbalization. In one of her readings of (Hannah Arendt's account of) the trial of Adolf Eichmann, a Nazi official tried in Jerusalem in 1961, and charged with, amongst others, "crimes against the Jewish people," Felman reflects on (Arendt's analysis of) the theatricality of the "tales of horror" provided by witnesses in that trial (141). In her psychoanalytical reading of the "courtroom scene" that saw Auschwitz survivor and writer K-Zetnik faint on the witness stand, Felman argues that "the law is used as a straightjacket [*sic*] to tame history as madness" (145). The law demands, from its witnesses, a certain kind of speech, and for them to cooperate, i.e. to "follow legal rules" (146). That kind of speech has the ability to order the past, to represent it. But, Felman points out, the trauma of Auschwitz is precisely something that "cannot be said"; it presents a past that is doomed to remain "unmastered" (148-149). Felman reads K-Zetnik's fainting as a defeat of law's purpose of translating "trauma into consciousness," to present an "abyss," a "failure of expression" (150, 157). As such, the event points to a distinction between a "legal" understanding of the trial-as-drama, in that its function is that of "*making justice seen*," and a literary understanding of "drama," for which Felman refers to the work of Walter Benjamin, in which it signifies precisely the limits of what can be "disclosed in words," even signals the "beyond of words" (162, italics in original). The metaphors of theatre and drama thus allow Felman to consider the limits of what can be seen and said (in court, for example), and, at the same time, to indicate the "*speaking power*" of moments in "Great trials" in which verbalization and visualization fail (166, italics in original).

Having taken inspiration from Felman's study of the relation between trials and traumas, literary scholar Yasco Horsman reflects on the twentieth century's expectation that trials do not only have a therapeutic function, but that they could also be *didactic*. He proposes that "lessons" could be learned about cultural traumas through trials, legal and/or literary, in a way that would "go beyond the simple transmission of information," but that would, instead, assist "in a radical transformation of our relation to the past." In his book,

Theatres of Justice, he raises the question: "through what *scenes* does one learn about the past?," indicating that there is always something theatrical about the didactic (*Theatres of Justice* 7). With reference to Felman's psychoanalytical work on the nature of learning, Horsman argues that "one learns during unexpected moments that are beyond conscious control," that "learning, therefore, may be hard to script" (*Theatres of Justice* 7). In other words, learning requires a theatrical moment, but of a specific, 'unscriptable' kind; perhaps an interruption or failure of the drama that is being performed. Through close readings of texts that raise questions about the pedagogical implications of trials, like Arendt's *Eichmann in Jerusalem*, and one of Bertolt Brecht's *Lehrstücke*, entitled *Die Massnahme*, which was "modeled … on a courtroom hearing" (11), Horsman contrasts the potentials of legal and literary 'theatres,' to bring about such moments. Furthermore, he emphasizes "literature's ability to ask for justice in ways that are not available to judges and lawyers and to go beyond the socially important task of providing closure" (12). Raising such demands, for Horsman, does not take place "discursively" or "thematically" only, but rather and more so, they are "*staged* performatively by the dramatic and theatrical structure" of literature (12). With reference to Jacques Derrida's performative understanding of literature and law, Horsman contends that demands for justice always have a "theatrical dimension" for the way in which they are "enacted in the public sphere," posited therein to cover over a gap in understanding that, in the case of literature, nevertheless keeps resonating in what is put on stage (12 and 14).

In much of the work on the relation between law and theatricality in the psychoanalytic tradition, then, references to theatre function as metaphors to elucidate something about the fundamental nature of representation to the field of law as a cultural, community- or state-vesting phenomenon. A central and motivating question for this tradition is the relation of representation to the unconscious; the tradition attends to the power that the unconscious, traditionally defined as that which structurally defies representation, exerts over subjects, on the one hand, and to its potential to question, undermine, or open up the existing order to new forms of understanding or insight, on the other. A central point appears to be that those new forms cannot be determined in *positive* terms, that they are of the nature of failure, the "stumbling block" (*Theatres of Justice* 139), of the question, the demand, or the promise; i.e. of an openness that is and is to remain "radically negative," as Horsman puts it in the conclusion of *Theatres of Justice* (137).

Although Felman's and Horsman's accounts of the trials they study are historicized somewhat through their comments on the trials' significance for an understanding of the twentieth century as the century of trauma (*The Juridical Unconscious* 1, *Theatres of Justice* 12), psychoanalytic theorizations of law's theatricality tend to be *structural* accounts of that relation. The cultural historical understanding of the relation between law and theatre has been more interested in the way in which the sphere of law and the sphere of theatre have exerted their mutual influence in different ways *over time*. The work of Julie Stone Peters is exemplary in this respect. A historian of drama and performance, Stone Peters has written much on law's relation with its own theatricality. Her contribution to Elizabeth Anker and Bernadette Meyler's volume, *New Directions in Law and Literature* (2017), entitled "Law as Performance: Historical Interpretation, Objects, Lexicons, and Other Methodological Problems," comprises a project statement on a historical study of that relation. As she explains in "Law as Performance," Stone Peters intends to study "the role of performance in the historical production and reception of law," i.e. the way in which certain legal events and practices must be understood as performances because they portray certain attitudes that can only be derived from the historical practice of theatre (196).

Law's relationship to the theatre, Stone Peters writes, is complicated by the fact that, although law was seen to resemble a theatre (she refers to seventeenth-century lawyer Giovanni Battista de Luca famous *dictum* that the trial is a 'Theatre of Justice and Truth'), law was also supposed to be more serious than theatre and it was felt that the courtroom should at all costs be prevented from becoming the site of a circus or carnival ("Law as Performance" 196). Law is, and is meant to be, "really boring" ('Law as Performance' 196). But, Stone Peters wonders, is law's boringness not something equally theatrical? In her article, "Theatrocracy Unwired: Legal Performance in the Modern Mediasphere," Stone Peters deconstructs the traditional opposition between "theatrocracy" and "nomocracy," a state ruled by theatre and a state ruled by law, respectively, which she traces back to Plato's *Republic*. 'Nomocracy' is the idea that law is autonomous from other spheres, and that its legitimacy is derived from its ability to resist the temptations of theatricality. It is traditionally presented as an antidote to 'theatrocracy,' a state in which audience applause determine verdicts and other law-making processes. Plato thought that 'theatrocracy' presented a threat to the stability and authority of law, and Stone Peters traces that conception in contemporary discussions of 'media trials' in 'Theatrocracy Unwired.' But Stone Peters' point is that, just as much as theatrocracy, nomocracy, or the idea of law's autonomy from theatricality, is an idea that law performs about itself, and, as such, is emphatically *staged*. On the basis of historically specific

material, she proposes that any performance of a *lack* of theatricality is always in fact also theatrical, i.e. contains particular uses of gestures, voice, and other embodied phenomena. In her stress on the performative nature of law's boringness, Stone Peters' work resembles that of Goodrich, when he argues that the 'boring' and 'serious' nature of black letter law is, in fact, an image that exerts its power over us, legal subjects, in a sensual, affective form. It also appears to have taken inspiration from the Derridean deconstructive tradition and its interest in the performative power of law (see Derrida's "Force of Law" and "Declarations of Independence"), albeit with an interest in the genealogical roots of this performativity.

If Stone Peters' work is concerned foremost with historical attitudes to and conceptualizations of drama and performance, the work of art historian Katherine Fischer Taylor considers a more concrete, architectural understanding of the historical exchange between the theatre and the courts. In her book, *In the Theatre of Criminal Justice: The Palais de Justice in Second Empire Paris* (1993), Fischer Taylor studies architectural drawings of the criminal 'wing' added to the *Palais de Justice* in 1868, to construct how a range of different actors, lawyers, jury, and public spectators, would have conceived the politics of criminal justice through the experience of its built environment. An earlier study, published in article form as, "Geometries of Power: Royal, Revolutionary, and Postrevolutionary French Courtrooms," studies how the architectural designs for courtrooms in a variety of different institutions of criminal as well as civil law in France transformed in reflection of the changing regimes of power around the time of the French Revolution. Roughly, during the Royal regime, courtroom designs reflected the primary importance of the King and his sovereign power, delegated to the judges presiding a case, in the diamond shape of their design, which placed the King's seat at their apex (435). In the revolutionary courtrooms, large tribunes, seating areas for the audience, were introduced, and the courtrooms were modeled on the circular layout of the new, democratic legislative chamber. Public spectatorship played a larger role, to emphasize the elected nature of judges and the role of juries in trials (436). In the postrevolutionary courtroom designs of the Napoleonic era, the circular layout was morphed into a rectangular scheme that included a processual axis that separated the room in two halves for the two parties involved in a trial, stressing the position of the bench and the judges' role of applying the law in a hierarchical system of appeals, in a way that situated them like "clergy in the chancel of a church" (436). Fischer Taylor's historical study of architectural designs, and their theatrical investment in the relation between the courtroom proceeding and its audience, thus reflects historical changes in legal practice and its politics.

With *In the Theatre of Criminal Justice*, Fischer Taylor pays tribute to the French philosopher Michel Foucault as an important source of inspiration for the genealogical set-up of her study of courtroom design as a way of studying the politics and power of law. Foucault himself comments on the theatricality of criminal justice in his book *Discipline and Punish*, on the development of the prison system in the 'Modern era,' the eighteenth and nineteenth century, which, he argues, presents a move away from the public spectacles of punishment he finds defined the regime of sovereign power that was dominant in the 'Classical era', the seventeenth and eighteenth centuries (*Discipline and Punish* 7-9 and 32-69). In the regime of disciplinary power, which the prison system exemplifies, punishment was taken away from such public scenes and was meant to register in the, more private, imagination of the individual, in "people's minds," by means of what Foucault called "tiny theatres of punishment" that took the form of "lessons," "moral 'representations'," and "examples of virtue," to be registered in "popular memory," and that turned punishment into a "school rather than a festival" (*Discipline and Punish* 110-113). Foucault thus presents another way of considering how the relationship between law and theatricality changes over time; another argument for the historicization of this relationship, as well as a confirmation of the psychoanalytical take on theatricality as being related to the imagination, to consciousness and the unconscious, i.e. of the understanding of theatricality as a mode of representation (though Foucault's comprises a historicization of this understanding as being characteristic of modernity).

The political understanding of the relation between law and theatre is based on a different conception of law than I have been discussing so far. Whereas the psychoanalytic and cultural historical traditions have mainly studied courts and courtrooms as public buildings, and trials as public events, and have been interested in the theatricality of mechanisms by means of which legal power is vested in society, the political understanding is concerned more with inventive processes of law-making. In both abstract and concrete ways, the theatre in this tradition indicates a space in which people come together to intervene in, or even build from the ground up, a political reality.

In the introduction of his book *Art as an Interface of Law and Justice*, literary scholar Frans-Willem Korsten considers the relationship between the theatre of law and the theatre of justice, and distinguishes between two forms of power: *potestas* and *potentia*.[12] The former,

[12] Chapters of the manuscript were sent to me by the author.

potestas, refers to the rule of law, or the rule of power, and is characterized by a "top-down" direction of action; the latter, *potentia*, instead works from the "bottom up," and refers to the "abilities of beings and things to exist and realize themselves on the basis of their desires, including their desires for justice". Korsten refers to Hannah Arendt's understanding of the relation of what she calls "*natality*" to the sphere of politics, by means of which Arendt indicates the ability embodied by all human beings to make "a new beginning". As such, the space of *potentia* does not only contrast with the space of *potestas*, but "exceeds" it, and even has the ability to "threaten an existing order" (*Art as an Interface* 6).[13] But, writes Korsten with reference to the political philosopher Charles Barbour, natality also "conditions" the space of power; although the potential of acting on desire may have the initial effect of rupture, any new beginning may also turn into an order that then continues to maintain itself through the top-down logic of *potestas*. Thus, the question that arises is how to keep the space, or spaces, of power open?

In the tradition of the political conceptualization of law's theatricality, one dominant answer to that question has been: through works of art and their relation to audiences; i.e. because of the political potential of art. A frequent point of reference in scholarly arguments for that potential has been the work of the French philosopher Jacques Rancière. In his book *The Politics of Aesthetics*, Rancière launches his famous notion of "the distribution of the sensible," by means of which he designates "the system of self-evident facts of sense perception that simultaneously discloses the existence of something in common and the delimitations that define the respective parts and positions within it" (*The Politics of Aesthetics* 7). Rancière's notion refers to the way in which the 'world' is parceled out between people or groups of people. The 'sensible,' designates a potential commonality, which is at the same time distributed in a particular way in a given social system. The political, then, is a domain that is 'in common' and yet not accessible to all. Rancière's notion of the distribution of the sensible has a double connotation: that of material property, and its distribution, and that of what is 'proper,' i.e. perceivable, imaginable, thinkable, possible, or representable. Rancière then defines art, or what he calls, "aesthetic acts," as "configurations of experience that create new modes of sense perception and induce novel forms of political subjectivity" (*The Politics of Aesthetics* 3). Art, in other words, can be a vehicle for the *re*distribution of the sensible; it can allow for the representation of new ideas, or even of new "casts," persons or

[13] Arendt herself calls the existential condition of natality the "central category of political … thought" because it is tied to "the political activity *par excellence*," namely "action," as it connotes the capacity of "initiative" (*The Human Condition* 9).

groups of people, that, as literary scholar Corina Stan puts it, were "never on stage before" (275), and thus help work towards a more egalitarian distribution of the world.

This take on the potential of art has been developed in metaphorical understandings of the relation between law and art as well as in more literal ones, as the notion of 'aesthetic acts' relieves art of a necessary formal or institutional context. The work of Dutch legal scholar Willem Witteveen can be seen as an example of the former. In his book *The Law as a Work of Art: An Alternative Philosophy of Law*, Witteveen conceptualizes the law as the subject of a performance that was to be judged by "the court of public opinion" (95).[14] Indeed, law and politics appear publicly, and thus call on the spectator's sense of responsibility. Openness, for Witteveen, takes the form of the inherently open nature of parliamentary democracy. In this view, then, democracy structurally allows for 'aesthetic acts,' for the appearance of new ideas or casts on the political stage, and thus for the formulation of new, potentially more just, laws. Likewise, Rancière's emancipatory understanding of politics also vests its hope in the potential of democracy. But for Rancière, democracy is not a "form of government" or a "style of social life," it *is* the very "intermittent acts of political subjectivization," the acts that allow for formerly unrepresentable people(s) or ideas to penetrate the existing order, and that thus "reconfigure the communal distribution of the sensible" (*The Politics of Aesthetics* xiii).

The German post-World War II tradition of documentary theatre, strongly influenced by the work of Bertolt Brecht, takes a more literal approach to the relation between law and 'aesthetic acts,' in the way in which a central figure in them became the re-enactment of legal trials, concerned with war crimes, in the form of plays, works of drama.[15] Such "tribunal plays," as for example Heinar Kipphardt's *In the Matter of J. Robert Oppenheimer* (1964), and Peter Weiss' *The Investigation* (1965), were based almost exclusively on documents and transcripts from historical trials: the Frankfurt Auschwitz Trials of 1964-1965 in Weiss, and the HUAC hearing of J. Robert Oppenheimer of 1954 in Kipphardt (Nussbaum 241). Formally, the plays take inspiration from the alienation techniques Brecht employed in his *Lehrstücke*, his didactic plays, such as *Die Maßnahme* (*The Measures Taken*, 1930), and tend to be open-ended, leaving the final judgment of the material they present, partly or completely, up to the audience. Weiss' *The Investigation*, for example, presents transcripts from the Auschwitz trials literally, but leaves out the verdicts and sentences. In *Die*

[14] My translation of the Dutch title of Witteveen's book, *De wet als kunstwerk: Een andere filosofie van het recht*.

[15] See Mason, Nussbaum, and Zipes for discussions and overviews of the tradition.

Maßnahme, Brecht had constructed the trials in his play to elicit a similar effect, inviting the audience to judge the play's decisions and verdicts, thereby transforming the passive audience into an active participant, one of Brecht's main motivations with his learning plays.[16]

But the lesson of Brecht's play is not directed at the audience as a group of individuals who would be called upon to reflect on their personal sense of justice in relation to the questions staged by the play, but to the audience as a *community*, who must learn that, to become a revolutionary, such an individual, private sense of justice is precisely what must be given up so that a collective sense of responsibility may arise (Horsman 107). Indeed, the question of the trial staged in Brecht's play is *political* rather than *legal*; i.e. the question is not so much how to translate what happened into the terms of a specific legal system, but rather what that which happened means to a specific political community. Working in this vein, and by leaving judgment up to the audience, the 1960's tribunal plays arguably take the trials they re-enact into a different kind of public sphere than that of the court, a sphere of reflective rather than legal judgment.[17] In that sphere, the legal question of "what happened" turns into "what does it mean" and takes political rather than legal significance. Very roughly (without close-reading the actual works here), the tribunal plays of the German documentary drama-tradition can thus be seen to present a way of democratizing judgment; taking it out of official juridical channels and into the theatre, in front of an audience of 'citizens', not in the sense that the spectators are legal subjects, but in the sense that they are addressed in the name of their public responsibility, their responsibility as members of a political community.[18] The works in the German documentary drama tradition that focus on historical trials and tribunals reflect not only the formal similarities between theatre and law, but transpose cases that were subject to legal judgment to the political sphere of art, endowing them, thereby, with the potential to become 'aesthetic acts.'

Nevertheless, this means that this political conceptualization of the relation between law and theatricality, bent as it is on opening up law's power, must resort to spheres that remain

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[16] See Horsman, *Theatres of Justice*, for an exposition on *Die Maßnahme* and Brecht's didactic theatre (93-94), and for a more general discussion of the relation between theatre and trials in Brecht's work. In Horsman's reading, *Die Maßnahme* asks its audience to judge a question that ultimately and insistently eludes judgment and the closure it seeks: the question of our responsibility towards the dead (91-132).

[17] Arendt makes this distinction in *Lectures on Kant's Political Philosophy*. For the sake of my argument I have substituted what she calls, following Kant, "determinative judgment," i.e. "judgments that subsume the particular under a general rule," for the term 'legal judgment' (Arendt, *Lectures* 83). "Reflective judgment," instead, "'derive' the rule from the particular," in that "some 'universal'" is perceived in it, Arendt writes (Arendt, *Lectures* 83); it is the kind of judgment involved in aesthetics, in the judgment of and reflection on art objects.

[18] For the notion that theatre generically relates to an audience of citizens, see Horsman, *Theatres of Justice*, 14. He writes: "Whereas poetry speaks to us as individuals, and the novel concentrates on humanity's social dimension, theatrical plays tend to address us as citizens – as members of a community."

somewhat outside of the legal 'proper,' namely to the theatres of art and/or democratic politics.

3. Law's theatricality after the age of drama: methodology and conceptual structure

The questions that structure the different conceptualizations of the relationship between law and theatricality dealt with above – namely, 1) what are the limits of representation and how can we account for the power of the unrepresentable, the unconscious?; 2) how can we understand the forms in which juridical power has appeared historically, genealogically?; and 3) in what way may that history be opened up by political interventions, 'aesthetic acts'? – have all influenced my work significantly. Yet, the scholars working in the different traditions I discussed – the psychoanalytic, the cultural historical, and the political – mostly agree that law is theatrical in ways that are fundamental for it, structural to its logic of representation, and crucial to the perception of its legitimacy. In recent years, however, scholars in the fields of law and the humanities have been taking note of a crisis of legitimacy that confronts different courts and legal institutions.[19] Scholars and citizens alike are concerned about the law and the way in which it is practiced, about the influence of politics on judicial decision-making, for example, or about the effect media representation has on the public perception of law as an institution. One of the main tenets of this dissertation is that that legitimacy crisis needs to be understood in relation to the different ways in which contemporary society is faced with challenges to the fundamental theatrical structure of its legal institutions. In processes and interventions that are sometimes intentional and sometimes unconscious, that theatrical structure appears to be changing under the pressure of those challenges.

These challenges have not been analyzed yet in relation to the legal theatre, conceptualizations of which tend to rely on a traditional notion of theatre as a process of verbalization, visualization, i.e. representation, that constitutes and legitimates an existing order (see especially my exposition of Pierre Legendre's work on the theatrical 'Third' above). However, I feel that the legitimacy crisis that scholars sense law is confronted with also becomes apparent in the theatrical structure of legal events and institutions in ways that cannot be grasped by a traditional notion of theatre. In the field of theatre studies, scholars

[19] See Presser for a general statement on this legitimacy crisis and overview of some pressing recent cases; see Goodrich, "Europe in America," for a statement on this crisis in relation new visual media (and references to some of the same cases, such as the O.J. Simpson trial and the *Bush v. Gore* decision on the 2000 presidential elections); see Grossman, et al. for a discussion of the question of the legitimacy of different international courts; Ortlep et al. for the Dutch context; and see Tomasky and McMahon on the United States Supreme Court, specifically, in relation to recent nominations for this bench.

have been taking note of certain structural shifts in the forms of theatre production, as a result of which its traditional forms are increasingly being reinvented. One of the most influential accounts of these shifts has been presented by theatre scholar Hans-Thies Lehmann, who analyzed a general breach with dramatic form in the field of theatre productions in the second half of the twentieth century in his book, *Postdramatic Theatre*, and he argues that these shifts have occurred because of certain politico-historical changes he considers in the context of cultural theories of postmodernism.[20] In this dissertation, I take up Lehmann's understanding of the shift from dramatic theatre to what he calls "postdramatic theatre" as a heuristic device for the study of theatricality in general, i.e. not only of theatre productions or artistic performances in the strict sense. This allows me to translate the logic of the forms Lehmann contrasts in the terms of "dramatic" and "postdramatic" theatre to an analysis of legal events and institutions in a way that supplements the 'negative' focus of the psychoanalytical tradition with a 'positive' one: i.e., to ask the question what new forms, besides 'failures' and 'stumbling blocks,' are being presented or becoming apparent on the legal stage. If the relation between theatre and drama that had always been taken for granted, as if it were "natural," was challenged in the postmodern era, as a result of specific politico-historical changes Lehmann points to in his book, I propose in this dissertation that those same politico-historical changes have made their marks on law. The question that arises is how the politico-historical changes Lehmann traces as having instigated the development towards postdramatic theatre in the field of theatre practice, take their specific form in relation to law's theatricality. I introduced the event of Praljak's courtroom suicide at the outset of this introduction to initiate a reflection on those challenges and the forms they take. My dissertation seeks not only to consider law's theatricality, consequently, but seeks to consider it as something that is currently and increasingly confronted with non-, anti-, and post-dramatic interventions that lay bare the fault lines of the traditional, dramatic legal theatre.

Although Lehmann's consideration of postdramatic theatre is partly theoretical, his book mainly seeks to give a historical account of the development of this new form through a discussion of countless examples of productions from the past century that support his thesis. In my own research I do not take such a historical approach, although my case studies could all, in some sense, be called 'historical,' in that I take them to be telling about the era in which they occur, i.e. the turn from the twentieth to the twenty-first century. Methodologically,

[20] Lehmann's intervention has been hugely influential in the field of theatre studies. See Bleeker (2008) and Fuchs's critical review, "*Postdramatic Theatre* by Hans-Thies Lehmann," for accounts of this influence.

however, my thesis is based on a more systematic and dialogical approach in taking the concepts of drama and postdrama to an analysis of law's theatricality. It derives inspiration from some of the methods practiced in the traditions of conceptualizing law's theatricality that I have outlined above, namely: 1) the Anglo-American tradition of close reading, as practiced, for example, in Shoshana Felman's *The Juridical Unconscious*, with the attention it pays to texts at the material and formal levels of gaps and repetitions, tensions and paradoxes; 2) the German tradition of media theory, as practiced, for example, in Cornelia Vismann's "*Rejouer les crimes*", with its ways of studying media as apparatuses that structure the production of meaning in specific ways; and 3) the Critical Legal Studies movement, which took inspiration from the psychoanalytic tradition, that of Derridean deconstruction, and that of Foucauldian genealogy, and especially these schools' shared interest in ways of mapping relations of power and domination in relation to the production of knowledge.

Inspired by these approaches, I study four legal events in this dissertation – two cases that arise in the context of the development of new legal institutions and two trials that challenge existing ones – in which the fault lines of traditional, dramatic legal theatre become visible in four distinct ways that relate to the theatrical aspects of space, embodiment, media, and genre. These four challenges make up for the dissertation's chapters. They comprise the different ways, though in no way exhaustive, in which I ask the question: is the legal theatre, in today's world, increasingly confronted with a postdramatic logic that challenges and undermines its constitutive forms? In each of the chapters the analysis of these trials and legal institutions is combined with a reading of a cultural text that responds to the trials – architectural design, a museum display, a film and two theatrical plays. Each of these texts, supplements to the legal events, I argue, nevertheless point to some of the blindspots of the trials, or questions that are unwittingly posed by them. The dissertation, as such, is an exercise in reading law 'with' cultural texts, in which the cultural texts are not mere representations of law but allow one to investigate a dimension of law that would otherwise be overlooked.

Chapter one considers the architectural design of the new permanent premises for the International Criminal Court in The Hague. Courthouse architecture traditionally portrays the signs and symbols of sovereign power by tapping into the spatial conventions of dramatic theatre. However, as an institution, the ICC actively seeks to resist the logic of sovereignty that conventionally underpins legal institutions. The Court was established on the basis of a multilateral treaty, the Rome Statute, and derives its jurisdiction from states' free and willing participation in that treaty. Iconographically, the ICC has translated the openness of its constitution in a courthouse design that features, as one of its main visual elements, a vertical

garden that clads the ICC's main building, the Court Tower, in which were to grow seedlings from each of the institution's member states. In chapter one, this thematization of the garden provokes a reflection on the relation between the garden as a *topos* that traditionally supplements buildings that represent power, i.e. on the relation between gardening, the creation of order in nature through cultivation, and sovereign power, which I characterize, in the chapter, as a power that is dramatic in form. Yet because of the specific form of the ICC's hanging garden – the plants do not establish their roots in the soil, but are grown in planter pots that can be removed – this element of the ICC's courthouse design presents an intervention in that relation, between the garden as *topos* and dramatic, sovereign power, to present a symbol for the possibility and promise of a more processual, democratic, and openly vulnerable legal constitution.

Chapter two continues to reflect on the international legal order but raises questions about the conditions under which an international multilateral agreement can be formulated. States can only participate if they are recognized by the international order as sovereign states to begin with, as this is what grants any political formation *international personhood*, a category I analyze in the terms of dramatic theatre. The chapter considers a museum that is located in The Hague, the Yi Jun Peace Museum, that pays tribute to a Korean diplomat, Yi Jun, who died while trying to obtain access to the Second Hague Peace Conference in 1907, after the states participating in that conference had decided to recognize Japan, who had recently colonized Korea, as Korea's legitimate representation at the negotiation table. On the one hand, the Yi Jun Peace Museum functions as a diplomatic endeavor and resembles an embassy in the way that it seeks to represent the sovereign nationhood of Korea. It does so to correct the historical misrecognition and to emphasize the importance of Korea's recognition in the present international circumstances, a recognition based on a dramatic form. On the other hand, I take the museum's emphasis on the diplomat's physical existence, on corporeality in general, and on the facticity of its location as a site of trauma, as raising critical questions about that dramatic form of the international order. In its emphasis on corporeality, I argue, the museum introjects an experience of vulnerability into the field of international relations, thus opening up its dramatic structure to a postdramatic sensibility.

Chapter three is concerned with the clash that occurs when the traditional medial forms of theatre are confronted with a new medium: the computational. The legal theatre has traditionally been conceived as one that is mediated verbally and visually, as in the conceptualizations by Legendre, Vismann, Goodrich and Felman I discussed above. However, new forms of evidential reasoning are increasingly entering the courts. In chapter three I

discuss the infamous infanticide trial of Lucia de Berk, in which probabilistic forms of reasoning played a decisive role, as did the discourses of the experts that were introduced to elucidate the calculations, namely statisticians, toxicologists, and criminal psychiatrists. Both the form of evidential reasoning and the expert discourses disturbed the legal theatre, I propose, and consequently the case led to contradictory outcomes: it was first seen as one of the gravest criminal trials in the history of Dutch criminal law, and later as one of its gravest miscarriages of justice. The accused was first presented with the gravest possible sentence, a combination of imprisonment for life and forced psychiatric treatment, but was later acquitted, not because there was no proof of her guilt, but because no crimes could be established to have been committed at all. It also left the public, the audience, divided in that it is still split over the question whether De Berk was an innocent victim of an elitist, patriarchal legal system, or a cunning perpetrator who has managed to fool us all and 'get away' with her deeds. The case of De Berk seems impossible to solve legally in a way that is final, conclusive; an outcome I attribute to the effect of the medial nature of the probability calculation and of the scientific nature of expert discourse.

If the cases studied in the first two chapters presented postdramatic artistic interventions in the legal sphere, in the case I analyze in chapter three it is the legal sphere itself that appears to have become permeated by postdramatic elements. The chapter thus also presents a shift in the dissertation's perspective on the relation between (post)dramatic theatre and law: if in the first two chapters the forms of postdrama are 'celebrated,' as it were, for their political potential to reimagine restrictive legal institutions, chapter three is sensitive to the impossibility to live in a world that is structurally unhinged and to the cultural strategies such a world elicits to deal with that. In that context, it is relevant that the De Berk trial I discuss in chapter three also led to artistic responses; most importantly a play, *Lucy, Een monsterproces* (Hans van Hechten, 2008; 2018), and a film, *Lucia de B.* (Paula van der Oest, 2014). The play and the trial appear to desire to do the opposite from the artworks discussed in the chapters one and two, the work of architecture and the museum exhibition. Rather than unsettle, undermine, and find new forms in response to the restrictions and effects of the form of drama, the play and the film instead intend to pour an undermined, unsettled case back into a coherent narrative frame, in the form of a dramatic plot. Based on my analyses of the artworks, I propose that when trials *themselves* become postdramatic, art seeks a re-dramatization of the case at hand, seeks to re-establish order and a sense of social solidarity. I start to explore, in chapter three, the implications and potential of this desire. The question

that remains is whether they can do that conclusively, given the open, irresolute structure and logic of the postdramatic form.

Although chapter four engages with a different problematic, it continues to reflect on this last question: the desire for drama, or re-dramatization, in a society governed by a legal order that appears to have become increasingly permeated by postdramatic elements. In chapter four I reflect on a trial in which it appeared to be impossible to establish anything resembling an 'act,' a fundamental generic aspect of drama as a symbolic form, as it is necessary for the construction of a plot in the theatre, and as it also presents a condition for a trial to come to conclusive judgment. In the case I discuss in chapter four, the French *Affaire du sang contaminé*, the Contaminated Blood Affair, a conglomerate of political, medical and corporate officials allowed the national blood supply to become contaminated with HIV in France, in the early 1908s, because of certain political-economic considerations. As such, they exposed the public, and especially people who relied on transfusions and blood products, like hemophiliac patients, to the risk of contracting AIDS and dying from it. Yet none of these officials' acts could be constructed as having been intent on this result. Consequently, the officials who were brought to trial were not charged with crimes such as poisoning or manslaughter – acts that would have 'done justice' as it were to the fact that lives were lost in the Affair – but with the misdemeanors of 'merchandizing fraud' and 'non-assistance to persons in danger' instead, for which the penalties are relatively mild prison sentences and fines.

In chapter four, with reference to Michel Foucault's concepts of biopower and governmentality and Lauren Berlant's reflections on them, I take the Affair as an exemplary case for ways in which contemporary society is structured by modes of agency that can no longer be understood as dramatic in the sense of originating in the intentions of an individual; instead acting in the contemporary seems increasingly to take the form of a certain passivity that can be understood to be un- or postdramatic. The chapter analyzes a play that was written and produced in response to the Affair, Hélène Cixous' *The Perjured City*, as raising the question whether this fact presents a disturbance not only to the resolutive potential of legal theatre, but also to the potential and form of political theatre as a mode of response to injustice. The play ends up providing a form of 'care' rather than a 'cure' or solution for the problems raised by the Affair, but the question remains what this entails, what it means for contemporary society in its desire and ability to deal, by juridico-theatrical means, with the fact that what Lehmann still characterized as the exceptional, eventual nature of postdrama, appears instead to have become the new 'normal'.

1. The ICC's New Permanent Premises: 'Lawness,' Legal Space, and Critical Courthouse Architecture

1. Legitimacy and visual archive: Law's theatricality and the International Criminal Court

This chapter studies the architectural design of the new, permanent premises of the International Criminal Court (ICC), the construction of which was completed in December 2015, in the city of The Hague, The Netherlands. Studying the ICC's courthouse architecture allows me to shed light on the constitution of the theatrical space of law, as courthouse architecture presents one of the key ways in which legal institutions show themselves to an audience, and an institution's built environment presents the occasion of a spectator's first encounter with its particular performance of 'lawness,' i.e. of what makes (its) law, recognizable *as law*. With reference to the work of theatre scholar Hans-Thies Lehmann and his concept of postdramatic theatre, I propose in this chapter that the ICC's courthouse architecture bears significance not only for the traditional conception of law's theatricality but can also be seen as a critique of that conception. The ICC's architecture, I argue, figures the ways in which the ICC, as an institution, and because of its particular constitution, presents a critique of the dramatic form of theatre that traditional conception of law's theatricality is based on and the kind of power that works through it.

Various scholars have reflected on the way that courthouse architecture bears meaning for the law. The space constituted by a courthouse has been studied as an abstract 'sign,' for the way in which a court demarcates the difference between the orderly fashion of law and its procedures and the "chaotic swarm of a world of everyday events" (Haldar 186). It has also been studied for the way the architecture of a specific courthouse reflects on a specific legal regime, as in Katherine Fischer Taylor's study of the *Palais de Justice* in Paris, France (1993), and Leif Dahlberg's study of a lower level and appellate court in Stockholm, Sweden (2016).[21] The ICC's courthouse has also already provoked other scholars to reflect on its architecture. See Vos and Stolk, who consider the role a public plays for institutes of international law in establishing their legitimacy. But whereas Vos and Stolk discuss the

[21] For further reading on the different ways in which courthouse architecture bears meaning for law and in society, see Fischer Taylor (1993); Mulcahy (2007 and 2011); Resnik and Curtis; Robson and Rodger; and Simon, Temple and Tobe.

general public (e.g. tourists) as the ICC's public, I propose that, instead, it is the states that are party to the Rome Statute who provide the ICC with its audience, since the Court is founded at the level of relations between nation states.[22] This changes the discussion of the Court's self-presentation significantly. These earlier studies relate courthouse architecture to law and justice, but they do not yet consider how it may also reflect on the nature of legal power, that is, on sovereignty, and can function as a way of studying critically the constitution of that power as a theatrical power, i.e. a power in which the audience plays a constitutive role, and as a *performance*, i.e. as bound up with a constitutive, "lawmaking" or "founding" force.[23]

Legal scholar Peter Goodrich reflects on this constitutive relation in his book *Legal Emblems and the Art of Law:* Obiter Depicta *as the Vision of Governance*, in which he proposes that "justice has always been a theatrical presence" (2). In the context of this statement, he considers, in a brief comparison of the aesthetic of English and American common law, what makes up that theatricality:

> We do not have the wigs and gowns, silver buckles, codpieces, fur trimmings, or mandatory dinners at the Inns of Court that subsist pretty much to the present day in the higher echelons of English common law, but even in the United States, the courthouses are frequently columned, ornately decorated, replete with Latin inscriptions, and contain numerous murals, portraits, statues, and insignia of decorum present alongside the elevation of the bench, the barrier of the bar, and the formality of the judicial robe. (2)

The theatrical presence Goodrich ascribes to justice takes the form of the appearance of law's actors as well as the space in which they appear. It is through such visible aspects of "legal decorum," Goodrich argues, that judicial institutions perform their legitimacy (1-2). But the formal setting, the courtroom's dress, does not affect law's public at a conscious level. With reference to Freud, Goodrich argues that recognition of the symbolic dimension of legality takes place at the level of the unconscious, which he calls an "image archive" that stores prior pictures of judges and courts as seen in films, on television, and from the architecture of the city, for example. People know what law looks like and is supposed to look like, Goodrich

[22] For further reading on the question of International Criminal Law's 'public': on International Tribunals' performative production of 'humanity' see Corrias and Gordon 105; on the 'hegemonic' structure of 'world community' see Koskenniemi, "Subjective Dangers," 4 and 10; see Tallgren on the potential for a critical public of international criminal law; see Vos and Stolk on international legal tourism.

[23] I am referring here to Benjamin (240) and Derrida, "Force of Law" (241).

appears to claim, because they are all born into a tradition and fed its images of legitimacy from the start. There is a "basic visual archive," Goodrich writes, "for the imagination and so visualization of justice as a theatre of law and truth." (6) And this basic archive is fundamental for people's acceptance of the authority and legitimacy of legal institutions. Although Goodrich mostly considers images in his book on the emblem tradition, his consideration of courtroom decorum connects the visual presentation of legal power to its spatial, theatrical, scenic dimension.

Whereas law's decorum is typically overlooked by lawyers and legal scholars, since "ornaments" are seen as secondary to the enunciations of norm, rule, and judgment, Goodrich argues that the legal theatre and its imagination are actually primary: "the image," he writes, "puts us in the mood for law" (7). Without the image, without the theatre, we do not perceive law *as* law, we cannot be impressed by institutions' legitimacy and authority. Images, for Goodrich, are "prior to law and above law" (8), and his book presents the example of the front-page location of emblems that accompany early modern prints of law books such as Justinian's *Institutes*. Even if we pay attention mainly to the text of the law, Goodrich points out, that text is never without its visual aspects either. The "ironically ornate gothic typeface" used by various institutes for the typesetting of so-called "black letter" law, for example, performs the "lure" of law as much as the more obviously visual decorum does (8).

Goodrich proposes that it is crucial to understand the way the appearance of the legal profession, its images and dress, "manipulate and transmit," so as to grasp the effect of the "practical public presence of law" on its audience, its subjects (11). He asks:

> If law is predicated upon what an early Chief Justice, Sir John Fortescue, termed a filial fear of God, then is it not likely that this fear is conveyed to the infantilized subjects of law through images? (11)

Indeed, it seems as though the appearance of law consists mainly of symbolizations of the supreme power that underpins the legal order – be it God or the sovereign – that is, the instance endowed with the power to install legal subjects. The emblems Goodrich discusses in his book are images of sovereignty, and some of the most recognizable symbols of legitimacy and authority in courtrooms must be the portraits of Kings and Queens or the national flags that adorn their walls. If it is sovereign power that underpins any posited legal system or set of laws, then visual references to sovereign power present the ultimate "insignia of *maiestas*" (1).

When, following Goodrich, legal subjects are all born into the image archive of law and all know what law is supposed to look like so that they recognize it and accept its authority and legitimacy when they encounter it, when they intuitively grasp what one could call 'lawness,' this indeed makes sense within the logic of the sovereign state that installs individuals, citizens, as legal subjects in the first place. In this chapter, however, I discuss a legal institution for which sovereignty, *maiestas*, has presented a constitutive problem from the very start of the development of the field of law over which it has jurisdiction. It is an institution, besides, for which the subjects are not simply given, as citizens are in the case of national courts, because their subject-hood depends on their free and willing participation in the multilateral agreement that founds the institution, namely: the International Criminal Court (ICC).

Established in 2002, the ICC is an international tribunal with jurisdiction to prosecute individuals for international crimes such as genocide, war crimes, and crimes against humanity. Its main mission, according to the Preamble to the Rome Statute, the multilateral treaty that founded the Court and provides its procedural and substantive law, is to "put an end to impunity" for crimes "of concern to the international community as a whole" ("The Rome Statute" 1). The Court effectively seeks to counter the legal irresponsibility of heads of state and other state representatives, who escape punishment under their own national laws because, as sovereigns, they have the power to make exceptions to those laws. Following the 1990s ad hoc Tribunals for the Former Yugoslavia and Rwanda, and regardless of whether the Court itself is to be considered a success, the Rome Statute can be said to have successfully established a principle of international criminal responsibility to counter the "culture of impunity" that had been in existence (Crawford 109).[24]

Yet, as an institution, the ICC struggles with its own specific problem of sovereignty. The international order, which in the twentieth century has taken the form of assemblies of sovereign states such as the United Nations (UN), its predecessors, the League of Nations, and The Hague Peace Conferences, is not set up as a sovereign order itself; it does not intend to constitute or be constituted by a form of absolute or supreme, supranational power.[25] It does seek to impose limitations on the exercise of sovereign power by individual states, in both internal and external affairs, through multilateral treaties on the rules of warfare and the use of weapons, for example, and through the criminalization of genocide. As such, it wields a

[24] See also Booth 157-158.

[25] For a discussion and overview of literature concerning the tension between International Criminal Law and state sovereignty, see Cryer.

power to punish and repress crime that resembles one expression of the sovereign power that structures nation states. The crucial question for the Court, then, is: how to resist becoming, itself, a supreme power? Or, in other words, how to balance a respect for national sovereign power with the exercise of the power needed to maintain the order of international criminal law?

The ICC can be seen as an institutional response to attempts throughout the twentieth century to establish war crimes tribunals, such as the initiative to put Kaiser Wilhelm I on trial after the First World War, the Nuremberg Military Tribunals (1945-1946) and Tokyo War Crimes Tribunal (1946) that followed the Second World War, the International Criminal Tribunal for the Former Yugoslavia (ICTY, 1993-2017), and the International Criminal Tribunal for Rwanda (ICTR, 1994-2015). The ICC should also be seen as a response to critiques of the legitimacy of such attempts, especially the Nuremberg and ICTY ones, as some had felt that they had been exercises of "victor's justice" (Crawford 117 and 128-129).[26] As a Court that derives its jurisdiction from the consent of member states that participate in its order out of their free will, that prosecutes and rules on the basis of written law – the Rome Statute – and that has thoroughly codified legislative procedures as well, the ICC seeks to establish a legitimate and balanced power, in contrast with what came before. The permanent character of the Court, in contrast with the *ad hoc* tribunals that preceded it, effectively produces an international community of accountable individuals, as do national criminal courts, but in contrast to national courts the 'we' of that international community is not stable or permanent. Because of its multilateral constitution and the freedom of states parties to subject to and withdraw from the court's jurisdiction, it appears that the court is faced with the political challenge of having to continuously convince its members to stay on board.[27]

With respect to that challenge, it is telling that the ICC was a contested institution from the start and has become increasingly vulnerable in recent years. Important powers, such as the US, China, and Russia, never signed up for participation and a number of states such as South Africa, Burundi and the Philippines announced their intention to withdraw from the Rome Statute in recent years, often in response to the Court's investigations of political violence in such states. At conferences in 2013 and 2017, the African Union even debated withdrawing in its entirety. It accused the ICC of having a bias against Africa; the Court has been criticized for its "neo-colonialism" and called "A European Court for Africa" (Tallgren

[26] See Crawford for an overview of the debates held throughout the second half of the twentieth century, leading up to the drafting of the Rome Statute.
[27] See Crawford for a discussion of this problem of "political acceptability."

85). And to be fair, until January 2016 the Court had only investigated situations on the African continent, whereas, obviously, political violence takes place in many other member states as well. Only in recent years it has started investigations elsewhere.

Given the Court's uncertain constituency and its specific constitutional challenge, as well as its stress on its multilateral make-up and the supposedly non-sovereign nature of its power, the question is how the ICC as an institution relates to the image archive that, according to Goodrich, and as discussed above, predetermines the general feeling of what I called 'lawness' for law's public, that puts subjects "in the mood" for accepting an institution's authority and legitimacy. If courthouses traditionally reference visual symbolizations of sovereignty, how would the ICC translate its constitution, and that constitution's struggle with sovereign power, into an imagination, an iconography? How would it dress its theatre?

As a Court, the ICC first proceeded in a large former office building of a Dutch telecommunications company that was adjusted to fit the Court's needs. In 2007, the Assembly of Member States, the Court's governing body, agreed that after five years of relative success the institution deserved a building that would "reflect the character of the International Criminal Court" ("Report on the Future Permanent Premises"). A design competition was launched, and the winning architects, the Danish firm, Schmidt Hammer Lassen, were commissioned to start realizing their plans for a courthouse that would represent the institution of international criminal law to the public (Murray). The design was realized at the site of the former Alexander Kazerne, military barracks at the edge of the City of The Hague, close to and yet set somewhat apart from what is known as The Hague's 'International Zone,' an area that also hosts the Peace Palace, the ICTY, EUROPOL and the World Forum, amongst other institutions. The ICC has proceeded in its newly built environment since the site's official opening in 2015.

Among the several elements that define the design of the complex as seen from the outside, one stands out, in my reading of it: a vertical garden that clads the main building, the Court Tower, with seedlings from each of the institution's member states. The ICC's garden does not just supplement the courthouse, as gardens traditionally supplement institutional buildings. Instead, and because of the seedling-representation of the ICC's member states, the garden is *thematized* in the courthouse's architectural design. This thematization, I propose, invites us to momentarily resist a reading of the garden in terms of the recent popularity in institutional architecture to focus on environmental sustainability and buildings' ecological

footprint, but also, more importantly, to resist reading it as 'ornate decoration' of the general kind that, according to Goodrich, traditionally allows us to recognize legal institutions, and, instead, to read the element *closely*.[28] Given the specific nature of this hanging garden, and how it defines the overall façade of the Court, the question that arises is: what does the garden construction perform, in theatrically presenting the Court, as it presents the seat of international criminal law? And how does it reflect, in turn, on the received imagination of 'lawness,' the vested visual archive, i.e. on law's traditional theatricality?

2. The garden as topos *and emblem of the ICC's struggle with sovereign power*

The design of the new permanent premises for the International Criminal Court in The Hague relies heavily on a garden motif. The defining element of the architects' design is a parterre garden that starts at ground level and rises up, cladding the Court Tower in an enclosed and enclosing hanging garden, as can be seen in Figure 1. This parterre garden was proposed to be planted with seedlings of plants and flowers from each of the ICC's member states (Etherington). In practice, in the realized version of the design, the hanging garden came to consist of English ivy, but other garden elements remain inspired by the plants and temporal zones of member states (Murray).

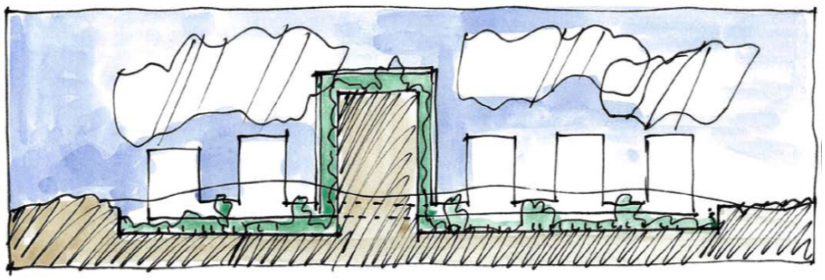

Figure 1. Drawing by Schmidt Hammer Lassen architects (ICC Permanent Premises)

The image of the Court presented in Figure 1, a frontal perspective, projects the premises as making an incision into a dune landscape that continues to the sides and to the back of the buildings – as indicated by the single undulating line that strikes through the sketch – demarcated by a garden that surrounds the premises on ground level and encapsulates the

[28] For a brief discussion of this aspect of the ICC's courthouse design, and the architects' consideration of these issues, see Vos and Stolk 10 and 18.

main building. The garden itself is enclosed by a glass wall, as can be seen in the figures below (Fig. 2 and 3).

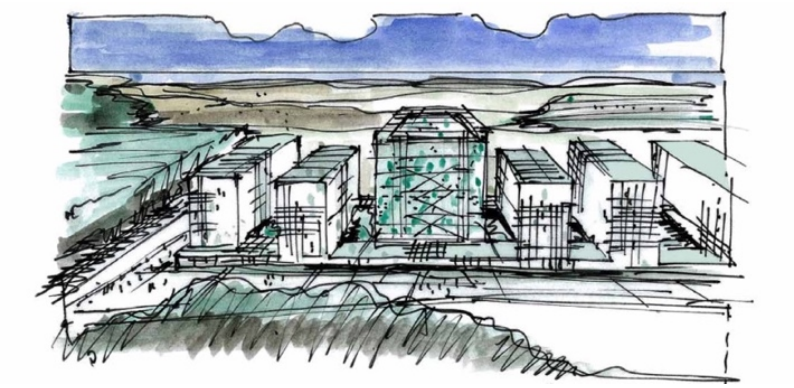

Figure 2. Drawing by Schmidt Hammer Lassen architects (ICC Permanent Premises)

Thus, Schmidt Hammer Lassen's visualizations project the Court's main building as reflecting or harboring forest-growth and plants in what looks like a greenhouse construction that separates the inside of the building from the outside.

Figure 3. Architecture visualizations by Schmidt Hammer Lassen architects (Etherington)

The building is closed, that is, but nevertheless transparent due to its glass construction, also towards the sky at the top. There is a plaza with plants and trees in front of the Court, open to the public (Fig. 3). The building's central hall is imagined as an open space as well, with natural growth that lets in sunlight while trees also provide shade (Fig. 4).

Figure 4. Architecture visualizations by Schmidt Hammer Lassen architects (Etherington)

The visualized vegetation near the building consists not only of trees, then, but also of plants, flowers and blooming shrubs that create a colorful and lush arrangement. The cladding continues up the building, as can be seen in the visualization of the courtroom, which is located a few floors above ground level and opens up to a view of the dune landscape and the sea behind the bench (Fig. 5).

Figure 5. Architecture visualizations by Schmidt Hammer Lassen architects (Etherington)

In the figure above the plants figure as a frame for the window, and here as well, the ceiling is made out of glass panes opening up to the sky above.

The garden and landscape design are intended, by the Assembly of States Parties who initiated the project of the courthouse and by the architects, to represent the ICC as an institution. If the question that arises is what this garden construction and landscape design

represent about the Court, a prior question needs to be addressed: what kind of *topos* is a garden in the first place? And in what way might it represent a form of power also at play in the constitution of law and processes of adjudication?

The garden has been considered in relation to law as a *metaphor*.[29] In this chapter, however, I study the garden not as a *textual* or *visual* instance, but as a *space*, a spatial form, i.e. a *topos*. I am not so much interested in the meaningful associations the garden establishes as a (textual) image, but rather in the topological questions raised by the garden as presenting a particular spatial logic, and in the symbolism of the design choices of this specific garden for the institution it 'decorates,' the ICC. As it encapsulates the Court Tower, the garden's vertical orientation and the closed nature of its glass encasement connote the form of an archetypical garden, the Medieval *hortus conclusus*, while also reinventing that form. In their book, *The Enclosed Garden*, a literal translation of the Latin phrase, Rob Aben and Saskia de Wit trace the historical development of this garden type and discuss its logic as a specific kind of place and space, a *topos*.[30] Etymologically, the word 'garden' refers to an enclosure as well, the English *geard* meaning a construction of plaited twigs, a (woven) fence; the French *jardin*, from the Vulgar Latin *gardinus*, meaning 'enclosed' (Aben and De Wit 10). As enclosure, the garden shuts out nature, while at the same time representing and collecting it, in ordered form, within, so Aben and De Wit write. Or, it at once excludes nature, and brings it into view. It represents the infinite outside in finite form. As such, Aben and De Wit argue, the garden is a "paradox" (10).

Gardens have traditionally been assigned the task of mediating between a natural and a built environment – especially the type of garden that is enclosed functions as an intermediary between nature and culture. According to Aben and De Wit, the enclosed garden establishes a vertical hierarchy. The space of the garden is closed off with high walls that archetypically connect the earth and the sky and seek to protect that connection from the dangers and violence that emanate from the vast wilderness surrounding it (Aben and De Wit 22 and 25). As a microcosm the enclosed garden projects the macrocosm as a similarly enclosed system, a totality which the garden as a structure claims it is possible to represent, and thus control. The garden expresses the power to cultivate nature, to establish order, and to maintain that order in contrast with the natural wilderness and potential violence they exclude.

[29] See Carpi 33-48 and Darian-Smith 395-412

[30] For a discussion of the *hortus conclusus* as a *literary* figure rather than a type of garden design, and for the gendered implications of this figure, see Herbert McAvoy.

The same relation between nature and culture expressed in the *topos* of the garden has structured theoretical debates about law and governance. In *Homo Sacer*, Giorgio Agamben considers a tradition of discussions in philosophy and jurisprudence over the Greek concept of *nomos*, and the antithetical relation it establishes between law and violence. Traditionally, *nomos* named the power that divides violence from law, "the world of beasts from the world of men," or nature from culture (Agamben 31). As such it was opposed to the principle of *physis*, which is understood as 'nature', but also as 'violence', as natural might or the power that comes with physical strength. The Sophists, Agamben writes, preferred *physis*, nature, which for them was anterior to any political form, to *nomos*. Consequently, their thought influenced theories of natural law in the Middle Ages. The modern political theorist Thomas Hobbes, by contrast, identified the state of nature with an anarchical violence between all – a violence that justifies the power of the sovereign to establish a state that excludes nature, a *nomos* (Agamben 35). According to Hobbes' myth of the origins of sovereign power, as proposed in his book *Leviathan*, with the constitution of the state, the state of nature becomes exterior to society. The sovereign draws a limit, both temporally and spatially, between the order of the law and the state of nature; the state of nature becomes at once a (albeit mythical) precursor to the state and the sphere that lies beyond its borders.

Yet, paradoxically, the state of nature also survives within it, namely in the person of the sovereign (Agamben 35). Whereas society consists in the exclusion of the state of nature and the violence that defines it, that exclusion, Agamben shows in his reading of Hobbes, cannot but have taken place through violence – the violence through which the sovereign constitutes himself. The constitution of a separation between nature and law can only happen through force, through the violence that characterizes nature, and takes the form of an "exception" to the law that is thereby being established. In other words, the act or decision that constitutes law, in fact violates it. "Sovereignty," Agamben argues throughout *Homo Sacer*, consists in "a state of indistinction between nature and culture, between violence and law" (35). This state of indistinction is a paradox, according to Agamben, and, so he argues, it can best be understood topologically, as a relation between spheres or zones. Schematically, Agamben draws the relation between order and nature as two spheres, nature and culture, that first appear distinct. But through the figure of the sovereign, the constitution of the state, the one turns out to be included in the heart of the other. As the power that mediates between nature and culture, the sovereign thus renders the two indistinct in his own person.

This paradox of the distinction between nature and culture that can only be expressed in a figure that in fact blurs that very distinction, can also be traced in the topology of the

garden, and especially in the logic of the act of cultivating, of gardening. The separation that the garden's enclosure establishes between cultivated and wild nature can only exist because the kind of violence expressed in the wilderness the garden excludes, what Agamben refers to as 'the world of beasts,' was also necessary to establish that garden, and by implication, the garden contains a reference to that kind of violence at its heart, a violence that is repeated in every act of cultivation, be it weeding, pruning, or sowing. The construction of a wall, and the cultivation of plants, can be seen as violent acts necessary to create and maintain order.

What becomes clear from Aben and De Wit's study of the history of the *hortus conclusus* is that gardens rarely stand by themselves. Although it is discussed as a thing in itself, the enclosed gardens studied in Aben and De Wit always connect to and supplement a building – examples they give are of monasteries, castles, palaces, or villas – or, after the rise of cities, an urban built environment, and they imply a person or institution that enacts the power to cultivate for which the garden stands – the Church, for example, or landownership, capital. This supplementary function makes the garden bear meaning in how it reflects on the institutions it is connected to, how it reflects on an owner or cultivator as being someone with the power to create order out of, or in the midst of, the chaos that surrounds them, which seems to be the garden's most important representational or symbolic function. This is why I suggest that the garden, as space in itself and as supplementary space, produces a double mirror. In supplementing a building, gardens are just mirrors in relation to "all other spaces that remain," to put it in the terms of Michel Foucault's brief reflections on the garden as a *topos* (27), i.e. to spatial abstractions like 'the universe' and 'totality'. They mirror the institution they supplement, thus relating to those abstractions and project fantasies about order and balance, for example, onto the image of that institution.

In light of the history of the enclosed garden, it is of interest that the ICC's garden is not one for taking a stroll. In the end, the architects' plan for a garden that would span the entire ground floor of the premises was never realized. What *was* constructed that remains visible from the outside was a glass casing, a kind of greenhouse, encapsulating the walls of the Court Tower, against which the garden grows up, or, rather, in which it 'hangs' (Fig. 6).

Figure 6. Rendered photograph of the finished complex ("The International Criminal Court The Hague / The Netherlands," render by Schmidt Hammer Lassen architects)

As such, the ICC's garden can rather be seen as an object of contemplation, like one of the emblems or frontispieces studied by Goodrich in the book discussed at the outset of this chapter. Much like those pictorial emblems (though itself certainly not only an image, a question to which I return later in the chapter), we may say that the garden is what gets a visitor 'in the mood' for international criminal law, when approaching the building. Much like the pictorial emblems, the garden, too, presents an allegory of the legal constitution it represents, in having been intended to consist of an assembly of seedling plants from member states to the Rome Statute. The garden thus figures the primary conditions of the ICC's jurisdiction: the fact that states willingly sign and ratify the Rome Statute so as to participate in and subject themselves to the order of international criminal law it establishes. As such, it reflects something in which member state representatives may recognize themselves, namely, that they are part of a particular constitution; a composition of states that make up a normative social order and a form of political community.

With this interpretation I propose that the courthouse design, and specifically the garden, addresses not the general public, not the city stroller looking for a place to withdraw from the urban environment – as public, urban gardens do – nor the tourist interested in international institutions, which is what Vos and Stolk propose (4-5 and 24-25). Rather, it addresses representatives of member states, the Court's subjects, which also make up for the Court's employees (judges and other officials come from member states). The 'visitor' I mention is someone who has business with the Court, someone represented by the Court for being part of its constitution, i.e. state representatives, Court employees, and anyone involved

in the Court's proceedings. The Court constitutes, thereby, a community of states, an international *polis*.

In *Homo Sacer*, Agamben considers how any *polis*, any political community, is constituted by sovereign power, and he considers the role played in this by criminal law (2-3). Criminal law lays down the ground rules for such communities; it establishes a normative social order by determining transgressive behavior. The punishment of transgressions of the law work to maintain that social order and they are calculated upon to have a deterrent effect. One of punishment's primary goals is didactic, it makes an example of the one who broke the rule so as to confirm that rule. According to the logic of the rule of law, those rules are transparent to the law's subjects, they are written down and thus can be known. In the same spirit, the Rome Statute provides the body of rules to which signatory states subject themselves. That law, then, establishes a social order, which in this case consists of state representatives. The Court only has jurisdiction, according to its Statute, over individual state representatives.

Yet, unlike at the level of the nation state, in which individuals are forced to become subjects to a legal regime merely because they have been born in a particular state, and of which force the state, the sovereign, is the sign and guarantor, at the international level, states are free to sign the law, the Rome Statute, should they want to subject themselves to it. There is no sovereign power to enforce that subjectivity, neither the beginning of it, nor the sustenance of it. States are as free to sign up to the Rome Statute as they are to withdraw from it. While a member state is signed up, however, the Court has the power to investigate, prosecute, and punish its representatives for breaches of international law. As such, it does exercise the kind of punitive power that at the national level maintains a sovereign order. This means that a state that signs the Rome Statute gives up some of its national sovereignty, as did the beings in Hobbes' state of nature. But, unlike those beings' complete submission to the sovereign Leviathan, in doing so a member state also confirms its sovereignty as it remains free to withdraw at any later stage.

Participation in the Rome Statute also allows a state to participate in the Assembly of States Parties, the Court's legislative body, and to contribute to the Court's offices. Judges and other officials of the Court come from any of the member states and are elected by the Assembly. As such, the community of subjects to the Court's normative order legislates and judges *itself*. Member states thus participate equally in the Court and legislation has a

democratic form, comparable to legislation mechanisms in the UN.[31] This democratic form reflects the intended democratic nature of the Court's punitive power as well. The Court Tower's hanging garden can be seen as a representation of this equality between member states, as each state gets an equal share in the garden's natural growth. It can be seen as a representation of states' freedom in subjecting themselves to the Court and symbolizes that freedom as constitutive of the Court's power. Just as the garden protects the Court Tower, the logic of participation protects the Court's democratic intentions. The garden can be said to be an emblem for the ICC's fantasy of a radically democratic international community, then, of a community of nation states that willingly and freely make their representatives accountable; i.e. a publicly self-critical community.

Given the garden's emphasis on the Court's democratic constitution, the equality between member states that is translated to the equal share seedlings were intended to take in it, the question becomes how this particular garden relates to the performance of sovereign power that can also be read in the tradition of the *hortus conclusus*, to the relation gardens vest between what Agamben called *nomos* and *physis*. Another question is how it relates to the emblem tradition in which, according to Goodrich, the legal theatre always pays tribute to its sovereign underpinning.

3. *Dramatic legal theatre and the logic of sovereignty: Considering the roguish element in the Rome Statute*

As I discussed in the introduction to this chapter, the imagination of 'lawness,' the visual archives through which subjects recognize legitimacy, according to Goodrich, is strongly linked to the sovereign power that constitutes legal orders, i.e. to the supreme power that is invoked in every concrete instance of legal practice, such as the interpretation of law in trials. In a chapter entitled, 'The Sovereign Likes to Hide: Visualizing Hierarchy,' Goodrich discusses how this constitutive element tends to appear in the legal emblem tradition, in pictorial allegories of law. The sovereign, Goodrich argues, is not often depicted in a banal way. Rather, the sovereign appears in emblems as a marked absence that conveys something of sovereignty's "spectral" or "nonhuman" nature (120 and 96). In order to illustrate this, Goodrich references an emblem that presents an empty chair endowed with royal insignia.

[31] For a critique of the ICC that stresses the difference between formal and empirical equality between sovereign states, see Cryer 988. For an overview of the gist of this critique, as dealing for example with the differences between the so-called Global North and Global South, see Tallgren 84.

"The empty chair," Goodrich writes, "signifies in coded form much more than can be seen." (94)

> The throne itself deserves worship, not because of the person of the king, its occupant, but because of the *dignitas* of the sovereign. The most powerful, the archetypal image is not, therefore, that of the throne occupied but of the empty seat of power. The seat is pure *potentia*. (95)

The empty chair figures not as a representation of lawgiving, Goodrich argues, but rather of what comes before: pure *potentia*, or the abstract potentiality Goodrich calls "nothingness" out of which, he argues, lawgiving emerges (96). Sovereignty thus appears as "a sign of disappearance," which also sometimes takes the form of a "part object" (96), such as a hand that appears out of a cloud bearing a sword (99). But the cloud itself also has significance, as Goodrich considers how one of the recurrent ways in which the powerful is figured as invisible is through the use of screens, veils, and curtains "that divide the human from the divine" (101). Indeed, Goodrich considers the emblem itself as something that "functions to veil," specifically in the case of a frontispiece like the one that prefigures the written text of Thomas Hobbes' *Leviathan* (111).

This function of veiling, and the role played by curtains in emblems, renders the image tradition discussed by Goodrich theatrical, as he calls it in the introduction to his book, in a way that provokes a reflection on the question to what specific kind of theatre the use of this metaphor refers. It seems to be a theatre that is characterized by the separation between a stage and an audience by means of curtains; a theatre that is constituted by the presence of an audience, a spectator, but that subjugates the spectator to the theatre and to the fiction constructed on the stage. Indeed, the theatre Goodrich invokes in his book is one that constitutes a universe, a world, that is *fictional* in the etymological sense of the Latin *fingere*, which means 'to form, to contrive, to devise,' i.e. a world called forth by law and by the emblem that allegorizes it. Goodrich often refers to the emblem as a 'devise' in emphasizing that it 'devises,' i.e. that it shapes or creates, produces (65), and in that context connects the emblem tradition to artistic practice such as painting (49), and theatre production (83). In the context of a concrete example, emblems made by Guillaume de la Perrière in 1540 under the title, *Le Thëatre des bons engins*, Goodrich discusses the way in which emblems relate to "stage machinery" (83), to "the engines, scaffolds, or props, the *pegmata*, that are used to make actors appear in front of their spectators" (83). Goodrich calls the emblem, the image

that intends to constitute 'lawness,' legitimacy, legality, a "dramatic machine" (83). 'Theatre' and 'drama' are metaphors for Goodrich, of course, but they allow him to say something about the emblem's constitutive power, its power to *produce*, to devise, law and the social order or political community based on it; a world-building power otherwise associated with the medium of theatre.

The theatricality that is established through these characteristics – the separation of stage and audience; the devising of a fictional universe, a world; the machinery of scaffolding and props that allow for a space of appearance in front of a spectator who is put in a passive position – connotes a specific form and tradition of theatre production, of theatre practice. In the field of theatre and performance studies this practice has been studied as "dramatic theatre," for example by theatre scholar Hans-Thies Lehmann, who reflected on the phrase to argue that the relation between the stage and the form of drama should not be taken for granted, as it had been in the field of theatre studies and in general culture (10 and 33). For Lehmann, dramatic theatre was produced in a specific historical period, roughly from "Elizabethan England," – the historical era that also saw the first production of legal emblems such as the ones by Andrea Alciato in 1531 (Goodrich i) – spanning "seventeenth-century France," and the "German classical period," to the 1970s (3 and 17), and it is characterized by a specific relation between the theatre and its audience, a relation characterized by subjugation or passivity. Dramatic theatre, according to Lehmann, attempts "to form (or strengthen) a social bond through theatre, a community uniting the audience and the stage emotionally and mentally," through catharsis (21). As such it is a theatre that serves, or co-founds (a certain form of) politics, namely, that of the sovereign state.

Lehmann defines dramatic theatre as a theatre engaged in "the representation of a closed-off fictional cosmos, the mimetic staging of a fable" (3). In drama, everyone plays out a prescribed role, not only the actors who play out the script of a play (22), but also the audience, who are to remain subjugated to the performance, observing in silence (3). The dramatic world depends on the exclusion of anything external to it, even and especially, as Lehmann puts it, the "exclusion of the real" – the fact that a performance comes into existence because real individuals play the roles of their characters "constitutes a constant latent threat" (4). Drama is characterized by the dominance of dialogue (3). It is "subordinated," as Lehmann puts it, "to the primacy of the text" (21), and often studied as a genre of *literature* rather than as performance (17). Besides thus being an authors' theatre, dramatic theatre is also a "director's theatre" (52), dominated as the practice is by a director who appears

"omnipotent" (32), who 'uses' the actor as if he were a "'button in the communication machine of theatre'" (Wirth in Lehmann 31).

As a spatial configuration, the theatre is defined by the separation that curtains install between the space of the stage and the space of the audience. But in vesting that separation, and in remaining on the sides of the stage once opened for the performance, a theatre's curtains also hide the space from which actors emerge on stage from the spectators' view. They separate the diegetic from the non-diegetic space, from the space that constitutes the diegesis: the space in which actors, for example, change into their costumes, or where they go through 'makeup', in preparation of a performance; the space, also, in which set pieces and props are stored. More abstractly, it is in that veiled space that actors study their lines, their characters, without which there can be no drama. But these veiled wings also harbor the director who makes his defining mark on a performance, while never actually entering the stage on which the fictional universe of that performance is staged. What happens on stage is constituted by those off-stage spaces and forces that enable the production of a fictional universe, a fable. Whatever appears on stage must stay true to that universe, the integrity of which must be protected throughout the performance. "Wholeness," Lehmann writes, is dramatic theatre's "*model* of the real." (22, author's italics) The world of drama is closed, and especially to the audience.

Traditional courthouse architecture comprises such a dramatic theatricality as well, especially as far as courtrooms go: legal officials enter them from spaces that remain closed to the audience, which, in turn, is to remain separate from the space in which the actions of legal practice take place; i.e. the pleading, the reading of verdicts. The 'director' of the show remains in the wings, as well; he makes his mark on what proceeds by means of indices, such as the photographs of Kings and Queens and the flags that adorn the walls of courtrooms as I discussed in the introduction of the chapter, or through the empty seat reserved for the King at the top of the courtrooms' diamond shape in the royal French courtrooms discussed by Katherine Fischer Taylor ("Geometries" 440), which resembles the empty seat reserved for Kings and Queens in Early Modern theatres. More abstractly, the director can be traced in the way that the sovereign power he invokes constitutes the law that is being spoken in the courtroom and the power of the judge to decide on a case.

Much like the emblems and drama, courtroom proceedings, too, are constituted by a power that is present as an absence, a power that seems structural to the dramatic form of law's theatricality. There is an analogy here with the traditional form of the *hortus conclusus*, in theatrical terms. The garden's visitor is invited to contemplate and admire the garden, not

to participate in its construction or maintenance. She is subjugated to the power of cultivation, the power to separate between nature and culture, that the garden emblematizes, and to the way in which its vertical orientation invokes and refers to the heavens, the absent, divinely sublime ordering principle that constitutes it. Goodrich, too, considers sovereign power "a space, a place from which power descends," and discusses the way the heavens, the sky, and light that shines from above, feature in legal emblems (111).

This reflection provokes us to consider the sovereign element that, despite the Court's democratic intentions, may nevertheless be 'hidden' in its constitution, to look for the director hidden in the wings of this courthouse, the cultivator of its garden.

For the ICC, sovereign power was something the Court meant to exclude altogether, as I have pointed out above. On the one hand, the ICC was founded to sever the relationship between the sovereign and violence, in that it wanted to suspend the immunity of heads of state and other state representatives and the 'culture of impunity,' as Crawford put it, this produced. On the other hand, however, the Court seems to grapple with the more fundamental relationship between sovereignty and violence, that is, violence of the kind that Walter Benjamin, and Jacques Derrida in commenting on him, have called "lawmaking" or "founding" violence (Benjamin 240; Derrida "Force of Law" 241). In his book on the international order, *Rogues: Two Essays on Reason*, Jacques Derrida briefly reflects on the form such founding violence takes in the international order:

> Universal democracy, beyond the nation-state and beyond citizenship, calls in fact for a supersovereignty that cannot but betray it. The abuse of power, for example that of the Security Council or of certain superpowers that sit on it permanently, is an abuse from the very beginning, well before any particular secondary abuse. Abuse of power is constitutive of sovereignty itself. (101-102)

The international order, despite all its democratic intentions, cannot but contain some form of "abuse of power," Derrida argues. The international order is a sovereign order, per definition, for him.

In a footnote to the passage cited, Derrida discusses the United Nations Security Council's attempts to forestall the establishment of the International Criminal Court, which took place as he was writing the book (*Rogues* 170n65). Amongst other parties, the United States found the Court's jurisdiction threatening. The United States went so far as to install a

federal law, 'The American Service-Members' Protection Act,' also known as the 'Hague Invasion Act,' which authorizes the United States' President to use "all means necessary" to release United States or allied personnel from detention on behalf of the ICC. The United States' request for a permanent deferral of actions by peacekeeping forces, granted by the Security Council, effectively exempts interventions, such as those that took place under the name of the 'war on terror,' from the Court's jurisdiction (*Rogues* 170n65). Derrida's reflections on the ICC already flag the sovereign, or "outlaw" role played by the United Nations Security Council in the process of establishing the ICC, and even in that Council's attempts to forestall the establishment of the Court altogether (*Rogues* 170n65).

This "outlaw" role has made its mark, too, on the body of law that grants the ICC its jurisdiction, now that it has been established nevertheless: the Rome Statute. In the part of the Statute that concerns the Court's jurisdiction, a set of articles defines who can refer situations for investigation and thus initiate prosecution. The articles stipulate some ground rules for the exercise of the Court's jurisdiction. Article 11, for example, limits jurisdiction temporally (jurisdiction "*ratione temporis*"): the Court may only investigate situations with respect to crimes committed after the Rome Statute has entered into force (i.e. after 2002), or after the date on which a particular state in which a crime was committed signed and ratified the Rome Statute ("The Rome Statute" 11). Article 12 states that the Court has jurisdiction over states which have become Party to the Statute, or if a State that is not a Party to the Statute accepts the Court's jurisdiction by formal declaration ("The Rome Statute" 11). Article 13 states the parties that may refer a situation to the Court:

> Article 13
> Exercise of Jurisdiction
> The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:
> (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
> (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
> (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15. ("The Rome Statute" 11)

Besides State Parties, the Court's free and willing members, and the ICC's Prosecutor, who is elected by an absolute majority vote in the Assembly of States Parties, the article introduces the UN Security Council as a third party with the right to refer situations to the Court, and refers to another body of law to legitimate that right, the Charter of the United Nations. Furthermore, whereas the State Parties right of referral is limited by article 14 to situations under the jurisdiction of the Court, that is, to situations in State Parties and within the "*ratione temporis*" stated in article 12, the Security Council's right of referral is not restricted by those limitations. The Security Council may refer situations in states regardless of whether they are Party to the Rome Statute. That means that, in contrast to the intended limitations on the Court's jurisdiction by the condition of free and willing membership, the Statute creates the possibility of making an exception, the potential to overrule the freedom of states to subject themselves to the Court's jurisdiction. The Security Council may refer situations to the Court in states that do not have the complementary privilege of having a democratic vote in international criminal legislation.

In the same set of articles concerning the Court's jurisdiction, the Security Council is granted another exceptional right:

> Article 16
> Deferral of investigation or prosecution
> No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions. ("The Rome Statute" 12)

Article 16 renders the Security Council the only party with the right to veto an investigation or prosecution. Although that right is limited to a period of 12 months, the possibility of renewal renders the right of deferral limitless, if the Security Council decides to keep requesting it. That right of deferral effectively gives the Security Council the power to overrule the Prosecutor in the exercise of her democratically granted powers to start a procedure, and the States Parties in maintaining the order they have democratically established and subjected themselves to. In other words, it establishes a supra-sovereign body,

with executive power and the possibility to call out a state of emergency; a body that is more sovereign than others.[32]

The United Nations Security Council is one of the UN's main organs, created after World War II, together with the United Nations as a whole, and charged with the task of maintaining international peace and security (Hurd 668). It consists of fifteen members, of which five have a permanent seat – China, France, Russia, the United Kingdom, and the United States; the powers that came out of World War II as victors – and ten seats are taken up by rotating, temporary members, elected from the UN member states. The council has the exclusive authority to decide on what constitutes a breach to international peace and security and how to respond to it (Hurd 669). Only the Security Council's permanent members have the infamous right of veto; they can prohibit any substantive Security Council resolution from entering into force, regardless of the result of voting procedures (Hurd 671). As the Security Council decides on crucial matters such as peace keeping missions and the admission of new member states, that right of veto can have significant consequences. The power embodied by those World War II victors that became permanent members of the Security Council is not legal power, it is not power constrained by law, or 'right', rather, it is 'natural might,' a combination of physical, that is, military and economic, strength. Given the number of cases which the Security Council has discussed but decided *not* to refer to the ICC – examples are the situations in Syria, Sri Lanka, and Gaza – the question arises if the relationship between the two bodies does not effectively politicize the Court. Referral may become a question of protecting friends and prosecuting enemies for those states (permanently) in the Security Council.[33]

The Rome Statute thus introduces a power into the constitution of the Court that radically disturbs the equality between the community of member states who willingly hold themselves accountable. Although the Security Council is made up of states that could potentially be party to the Rome Statute and thus subject to the ICC's jurisdiction, as an organ of the UN it cannot fall under the ICC's jurisdiction (or become a member to the Rome Statute). Consequently, not only the Rome Statute's member states, but, in fact, all recognized states are potentially exposed to the ICC's punitive power; and all states may also be

[32] This invokes discussions about the status of the UN Security Council Resolution that established the ICTY, and whether that meant that the Tribunal was not established 'by law,' but by executive decree, which caused a legitimacy problem. See Crawford 129-133.

[33] Hurd discusses the authority and practical power exercised by the Security Council and how it "contradicts the popular image of an anarchic international system" (668). Like Derrida, he criticizes the Council for its "imperial character," with reference to other critics who have used such terms, such as Hardt and Negri, and more controversially, Schmitt (668).

protected from such exposure, should it suit the (permanent) members of the Security Council. As such, the Court has subjected itself to a power that blurs its order of positive right with a form of natural might that compromises its independence and impartiality, as well as its intentions of being based on a democratic constitution: the power of the sovereign exception.

So, if the garden presents an emblem of the ICC's constitution, as I have been arguing, we now know that a sovereign power infests that constitution. Still, if in light of this it may seem inviting to consider the hanging garden that clads the Court Tower as a kind of veil, a set of curtains, behind which a director, i.e. sovereign power, 'hides' after all, to put it in Goodrich's terms, I'd like to resist this reading. Sovereign power is indeed absent in the ICC's botanical *hortus conclusus* project but in a way that cannot be read as a 'present-absence,' i.e. it is absent not in a *negative* but in a *positive* way, I suggest. The Security Council's power cannot be represented in the logic of the garden as it was intended to present an assembly of native seedlings, since it is not a national power or a member state. Despite the fact that aspects of its judicial practice cannot but be read in terms of the presence of a sovereign power, I contend that the garden, as emblem, emphasizes the element of *membership* and *participation*, and presents it as the force through which the Court tries to resist the dramatic logic of sovereignty. Or, the garden presents the force of a different form of theatre that can be compared to what, in the field of drama studies, has been studied as a theatre that is "no longer dramatic" (Lehmann 1).

4. *A postdramatic legal intervention: The ICC's performative critique of the international tribunals that preceded it*

As I already indicated in the introduction, the ICC, given its particular challenge, would of course be careful about referencing the presence of a sovereign element in its constitution visually. Whereas for national courts this may be what brings across the institution's legitimacy, the ICC's legitimacy consists precisely in the way its constitution resists the logic of a supreme power. This resistance takes not only a symbolic form, but also, or even more importantly, a *practical* one. In practice, namely, and despite the sovereign power that lurks in its law in the form of the Security Council's power to decide on the exception, if all of the states that participate in the Rome Statute would decide to leave, that would effectively be the end of the Court. As it is member states who 'run' the court in providing it with employees,

such a multilateral termination of the contract that established the ICC would stall the Court's ability to proceed in practice in what would amount to a kind of institutional suicide.

The constitution of the Court is more ambiguous, then, than that of national courts: the sovereign element brought in through the clauses in the Rome Statute and in the form of the UN Security Council, as discussed above, which undermines the multilateral constitution of the court, is, in turn, potentially undermined by that multilateral constitution. Together, and in the context of the Court, the member states present a force that counterbalances that of the Security Council's sovereign power, and that makes the power that underpins the court one that is fundamentally unstable and open. In light of this, the African Union's ongoing discussions on their members' participation in the Rome Statute can be seen as a sign of that openness. Although the member states are bound together by a legal contract that is supposed to end a certain 'state of nature,' the states parties to the Rome Statute do not quite make up a Leviathan, i.e. Thomas Hobbes' monstrous embodiment of the sovereign power established thereby, but instead indicate the potential deconstructibility of that construction. In the Court's vulnerability lies its political potential; precisely because the Court may disintegrate, may come apart, may be disbanded, by its members, it harbors the promise of a legitimacy not based on sovereign violence, or at least, not on its traditional form.

This potential is what is emblematized by the garden. The garden performs the potential deconstruction of the Court that is inherent to the Court's multilateral constitution, i.e. its dependence on the free and willing participation of its member states, particularly for the way in which it presents not only an object of contemplation but also a specific practice of cultivation. Especially because of its 'hanging,' or perhaps 'floating' nature: the plants that grow in the Court Tower's garden do not establish their roots in an existing soil structure, but reside in planter pots. As such, individual plants can be easily removed from the constellation, and new plants can be added onto it. The garden is emphatically dynamic and open. It renders emblematic its continuous need to be maintained, to be constructed and reconstructed, because it could, potentially, always be broken down. As such, the botanical garden is a *project* or *process* more than a *state*. It presents the design of the ICC's permanent premises as one that thematises the institution's potential *impermanence*. The garden thus harbours, and makes into an institutional theme, not only the spatial paradox of the relation between nature and culture, but, in this case, also the temporal paradox of an existence that is not static, a constitution that is by definition and permanently open to change. Its performance thematises the constitutive involvement of, even dependence on, the engaged participation of its public of member states.

The absence of a mark of sovereign power in the allegory the garden presents of the ICC's democratic project, is not a veil, then, or an ideological screening off of what is nevertheless a sovereign order, because a director lurks in its theatrical wings. Or if it *can* be seen as such, that is not the only way to interpret it. I propose that, in emphasizing the participatory nature of the Court's constitution, instead, the garden is a sign of an altogether different kind of theatre practice that critically acknowledges the power of and seeks to counter the subjugating logic of drama. In this light, the move made by the ICC with respect to the traditional sovereign logic of law is analogous to a move that has been analyzed in the field of theatre and performance studies, from dramatic to "postdramatic" theatre (Lehmann 1). It was a move that consisted primarily in an increased involvement of spectators in theatrical practices, placing an emphasis, thereby, on the constitutive nature of the audience for any performance, but in a way significantly different from the tradition of dramatic theatre.

"To call theatre 'postdramatic'," writes Karen Jürs-Munby in the introduction to her English translation of Lehmann's book, *Postdramatic Theatre*,

> involves subjecting the traditional relationship of theatre to drama to deconstruction and takes account of the numerous ways in which this relationship has been refigured in contemporary practice since the 1970s. (2)

Indeed, in *Postdramatic Theatre*, Lehmann presents an overview of the internal critique to which theatre practitioners have put the tradition of drama from the 1970s until now; an era that saw the rise of 'performance' as a category or genre of theatre. Lehmann, who was interested in the theory of 'postmodernity,' especially the idea of a general cultural critique of "grand narratives" developed by Jean-François Lyotard (13 and 21), sought to study the way in which theatrical practice had constructed a critique of the logic of its own 'grand narrative,' drama, of its tendency to present the resolution of conflicts (13), and of its closed nature. This trajectory, however, Lehmann emphasized, was not necessarily part of a general cultural shift, but developed as an *internal critique*, i.e. "from *within* theatre aesthetics" (14, author's italics).

One of the most important moves in that development was what Jürs-Munby calls postdramatic theatre's "turn towards the audience" (Lehmann *Postdramatic Theatre* 5). Whereas dramatic theatre consisted in the subjugation of the audience – spectators were put into a position of empathetic imagination that rendered them "passive" according to Lehmann

(22 and 157) – postdramatic theatre actively involves the audience in its processes of production, for one, for presenting a tendency to make the audience members self-aware (6), but also for putting the audience into the position of *co-creating* the theatre text, as it were, in ways that render the performance fundamentally open and unpredictable. When spectators "become an active *component* of the event," Lehmann writes,

> the idea of a coherent formation of a theatre 'work' necessarily becomes obsolete: theatre that includes the actions and utterances of the visitor as a constitutive element can practically and theoretically no longer be self-contained. The theatre event thus makes explicit the nature of process that is peculiar to it, including its inherent unpredictability. (61, author's italics)

An example that Lehmann gives of such an 'un-self-contained' theatre is a production by the company Angelus Novus, in Tokyo, in which they performed a reading of Heiner Müller's *Hamletmaschine*, in *Hamlet/Hamletmaschine* (1992). The production took place in an empty film studio that had opened its doors towards the street; visitors could come and go as they pleased. In fact, as rehearsals had been open to the public as well, the production did not make entirely clear whether a 'real' show was going on, and the threshold was rather low for the public to come in and leave whenever they wanted to, Lehmann writes. But because of that lack of demarcation of the performance, which did not take place on a stage but on the floor that also provided space for the audience, and because of the freedom of the visitors to leave and come in as they liked, there was a heightened sense of awareness of the audience's presence that rendered that presence part of the performance: "entering and leaving the studio space became noticeable as an act, even a decision of the spectator," Lehmann writes (122), which in turn rendered every spectator "a 'participant' for other visitors" (123). This in turn had the effect of heightening the spectator's awareness of her own presence, that is, of the sounds she made, the distance she kept from others. In other words, the spectator became a 'performer' in the "'situation'" that had thus come about (123). The performance consisted not so much in a reading-out-loud of *Hamletmaschine*, but in the setting in which that reading occurred; the self-awareness of the audience's performance as audience was not an effect of the work, it *was* the work.

As the actors *and* audience become 'performers' in postdramatic theatre, they become co-producers of the performance and merge in what Lehmann calls a "*shared space*," a space "shared equally by performers and visitors" (122, author's italics). Such theatre dissolves the

separation between the space of the stage and the space of the audience that is fundamental to dramatic theatre, just as it is to legal institutions. What takes its place is what Lehmann characterizes as an "'underdefined' sphere – neither completely public nor completely private" (123). The theatre produced in that underdefined sphere is not free of norms per se, but norms become subject to scrutiny in it, and the stress is on a shared, collective responsibility for the theatre that is in the process of being made. Postdramatic theatre:

> quietly radicalizes the *responsibility* of the spectators for the theatrical process, which they can co-create but also disturb or even destroy through their behaviour. The vulnerability of the process becomes its *raison d'être* and inquires into the norms of everyday behaviour. (124)

If its *raison d'être* is the vulnerability of the performance, as Lehmann argues, I propose that postdramatic theatre mirrors the openness and processual nature of the ICC as a project and performance. If postdramatic theatre emerged from the world of theatre itself, as an internal critique on the logic of drama, the project of the ICC emerged as an internal critical response to the form of earlier international criminal tribunals.

The earlier versions of international criminal tribunals were based on the dramatic logic of national courthouses, as they subjugated their audiences, turning them into children, as it were, to play on Goodrich's reference to the 'filial fear' of the sovereign. Indeed, many of these attempts have been discussed in theatrical terms so as to indicate the logic of sovereignty I have discussed above, as a hidden but constitutive and powerful absent-presence. Hannah Arendt repeatedly referred to the Eichmann trial, held in Jerusalem in 1961-1962, in theatrical terms, as a "show" because she felt the trial provided a stage for the performance of the legitimacy of the State of Israel for a world audience (4). This happened especially through the theatrics of its prosecutor, Gideon Hausner, who she felt presented a mouthpiece for Israel's prime minister, David Ben Gurion, who lurked in the courtroom's wings as the show's hidden director, or "invisible stage manager," in Arendt's terms, for his political intentions (5).

In his reflections on the trial of Slobodan Milošević, Martti Koskenniemi considers the ICTY to have been a "show trial," firstly, as it provided the occasion for the international community to construct itself, theatrically, as a moral community "out of the tragedies of others" (34), as the newly established State of Israel had arguably done out of the tragedies of its own. Secondly, the Tribunal presented a "show" for its didactic purposes, i.e. because of

the emphasis it placed on its ability to produce an unambiguous history about the Balkan Wars through the collection and presentation of evidence. For those same reasons, Koskenniemi considers the Nuremberg Military Tribunals a 'show' as well, as it also intended to produce such a unified history of the events ("Between Impunity" 19-20). Such a history, according to Koskenniemi, cannot come about unless a trial silences the accused, which would effectively turn it into a "show trial" ("Between Impunity" 35), as trials, because of their adversary nature, necessarily provide room for the contestation of facts. The subjection of the audience to political and didactic fictions, the hiding of certain sovereign elements in the wings of these shows (the state of Israel, the Allied victors of World War II, and, in the case of the ICTY, the UN Security Council), and the silencing of some in favour of the fictions of others rendered these earlier 'shows' of international criminal law dramatic theatre.

Over the course of the last decade of the twentieth century, however, as discussed above, it became apparent that international criminal law, if it was to become a permanent presence, could not constitute itself as such. Its architecture, its performance, must, instead, invite its audience to *relate* to what is happening, rendering the stage of international criminal law a '*shared space*' in the sense in which Lehmann considers this in the context of the 'situation' produced by the Angelus Novus company in that Tokyo film studio, producing a collective responsibility for the performance. The relations of the public – by which I mean the member states, state representatives, and the Court employees they deliver – to the Court must continuously be negotiated and maintained, as they are free to come and go as they please, as it were. The production of international criminal law is dependent on the way in which the audience is involved in that performance. What the courthouse garden emphasizes is this aspect of the *vulnerability* of the ICC's constitution and the awareness of the nature of its constitution as *process*.

In the introduction to this chapter, I discussed how courthouse architecture is one of the ways in which law's presence can be understood as a *theatrical* presence. Indeed, with their emphasis on décor, dress, and their reliance on theatre tropes like the separation between the space of the stage – the courtroom – and the space of the audience – the tribune, courthouses resemble traditional forms in which theatre has manifested itself. This traditional theatrical form relies, as much as the court and enclosed garden do, on a stable boundary between inside and outside, on a set of walls that demarcate the space of order, of structured and scripted play, of law, from the chaos of the outside world, a boundary that is embodied in the ambiguous figure of the sovereign. If legitimacy is normally derived from a performance that

references sovereignty, the ICC performs its legitimacy by emphasizing, in its design, the potential of the Court to undermine the sovereign power that is nevertheless also part of its constitution. As such, it resembles the move made by postdramatic theatre, according to Lehmann, which developed as a form of critique of the closed and subjugating nature of dramatic theatre. The ICC, I have argued in this chapter, developed as a critical intervention in the project of international criminal law, as an institution that, despite also drawing on it, actively tries to resist the sovereign logic that normally underpins any form of institutionalization, any constitution of a legal order, and that continuously grapples with the political challenge of keeping its members involved. Seemingly beside the point, a 'mere' ornament, and taken as a performance, the garden design of the ICC's new courthouse architecture presents a challenge to the traditional theatrical constitution of law.

2. The Yi Jun Peace Museum: Diplomatic Relations, International Personhood, and Corporeality in the City of Peace and Justice

1. International personhood and the recognition of states: Diplomatic theatre

In the previous chapter I studied the constitution of the legal theatre by analyzing how the architectural design of the new permanent premises for the International Criminal Court in The Hague subverts the traditional spatial and symbolical form of that theatre. I reflected on the way in which International Criminal Law's idea of a foundational multilaterality gives shape to a different form of theatre that can be read in the architectural design and the specific iconography of the courthouse garden, and which, ultimately, promises a different politico-social reality from the one shaped by the sovereign power that underpins the traditional legal theatre. In order to understand the differences between that traditional form and the ICC's reinvention, I compared the shift in the juridical make-up of that Court to a shift that occurred in the field of theatre in the second half of the twentieth century, with the onset of what Hans-Thies Lehmann calls "postdramatic theatre." I argued that postdrama's reliance on a 'shared space,' in which the difference between actors and spectators that is fundamental to dramatic theatre fades and all become equally creative of what constitutes the 'performance,' resembles the practical reality of a legal order based on multilateral agreement.

In this chapter I continue to explore the space of the international order as one that raises questions about the construction of the legal theatre, and move to discuss a question that comes prior to the one discussed in the previous chapter, as it concerns the conditions for the devising of a multilateral agreement between sovereign states: namely, the question of the recognition of statehood, by means of which states obtain international personhood, the condition for states' participation in international relations and for becoming a subject of international law. This question of recognition arises in the case that I study in this chapter, in a conflict between different aspects of the space in which states conduct their relations with one another. On the one hand, I will consider the international order in terms of its representational nature. I understand this order as a space of appearance constituted by rules

about who can appear and who cannot, mediated by the theatrical mask of personhood. On the other hand, I will consider its substantial nature, in terms of a 'real' or 'material' space in which bodies encounter one another, that is, the bodies of actors otherwise hidden behind their *personae*. The conflict between the two kinds of spaces plays out, or is dramatized, in a museum that is located in The Hague, the Yi Jun Peace Museum. The Museum reflects on a particular event that took place during the Second Hague Peace Conference of 1907, namely the death of a Korean diplomat, Yi Jun, who was killed or committed suicide – the case was never decided – in the hotel in which he stayed, while attempting to gain admission to the Conference. Yi Jun's death occurred after the other Peace Conference participants decided not to recognize his credentials, as they instead took Japan, that had recently colonized Korea, as the rightful representative of Korea's interests at the negotiation table.

In my reading, the museum deals with and responds to the customs and laws that regulate the issue of *international personhood* that defines what political entities have the right to represent their interests in the sphere of international relations, relations between states, to establish embassies, organize diplomatic missions, visit conferences, participate in institutions like the United Nations and, also, of course, the International Criminal Court I discussed in the previous chapter. In order to gain that right of representation, such a political entity must be recognized as a legal person. So, *recognition* is what constitutes a state as a member of the international order.[34] The customs of public international law have it that the mere claim of a political entity to be a state is not sufficient for it to be regarded as such (Jennings and Watts par. 39). Although in some sense recognition merely confirms an existing fact, it is at the same time *constitutive*, in that without a widely shared recognition a particular proclaimed political entity will not be able to obtain international personhood, i.e. take up a position in the international community, appear before its law, and participate in the rights and duties it distributes.

While recognition is at the discretion of other states and their interest in entering into relations with a proclaimed political entity, there are some legal principles, some customs, that regulate recognition as well.[35] For recognition to be legal, the proclaimed entity must fulfill the conditions of statehood required by international law (Jennings and Watts par. 40).

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[34] See Crawford, Jennings and Watts, Lauterpacht, and Oppenheim for general discussions of the concepts of statehood, recognition and international personhood. Not only states are subjects of international law; see Parlett for a discussion of the challenges of defining international legal personality for qualitatively different subjects of international law.

[35] Crawford argues that it is the other way around, and recognition, or rather "the creation of States," is "a matter in principle governed by international law and not left to the discretion of individual States" (v). It is only the "rhetoric of recognition" that implies it is otherwise, Crawford argues (v).

These conditions were written up in 1933, in the *Montevideo Convention on the Rights and Duties of States*, which states that "the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states." ("Montevideo Convention" art. 1) The first three conditions are generally accepted as international customs on the creation of a state. The fourth condition is seen not as a condition, but as a consequence of such a creation. Because of such rules, a recognizing state performs a "quasi-judicial function" (Jennings and Watts par. 40). At the same time, however, it is widely known and accepted, deemed to be "unavoidable," that processes of recognition are influenced "from time to time" by "political considerations" (Jennings and Watts par. 40).

These questions of recognition and international personhood have come to matter greatly in the course of the twentieth century's international politics and have been a major source of conflict (Crawford 4). The unwillingness of certain Arab states to recognize Israel, established in 1948, for example, has been an ongoing challenge for the international community. The question of recognition is of special importance in cases in which a new state tries to establish itself by breaking off from an existing state, such as Bangladesh did in 1971, or Kosovo in 2008, when it declared independence from Serbia. Kosovo, for one, has not obtained full recognition from the international community and has not been able to join the United Nations up until now. The same holds for the disputed status Taiwan has held ever since its independent existence. The case at hand, that of the recognition of Korea at the beginning of the twentieth century, however, concerned not the establishment of a new state seceding from an existing one, but, instead, presents a case of a *loss* of international personhood, a loss of recognition, for a state that had been recognized as such before.[36] While a relatively independent political entity until the early twentieth century, the Koreans suffered their loss as a result of Japan's imperial ambitions. Modeled on the Western empires, Japan sought to expand its territory and established a protectorate in Korea with the Japan–Korea Treaty (also called the 'Eulsa Treaty,' or 'Eulsa Unwilling Treaty') of November 17, 1905.[37] In a series of treaties that followed, Japan took increasing control, and on 22 August 1910 they officially annexed Korea, so that it became part of Japan. The international community,

[36] For historical accounts see Dudden, Duus, Jun, and Robinson.

[37] See Dudden for a discussion of 'protectorate' as a "euphemism" (and as opposed to 'colony') in relation to the Japanese-Korean context (8-9). See Crawford for a general discussion of protectorates, among which colonial protectorates (299-300), and other forms of dependency, in relation to statehood and international personhood (282-319). Note specifically his argument to study the matter on a case-specific basis (285).

or at least powerful states like Britain and the US, accepted the take-over, under the condition that the Japanese would stay away from territories that were under their own governance.

Perhaps for apparent reasons, the case is not so well-known in the West – it concerns a colonization and decolonization somewhat unrelated to the Western world. But the problematic loss of Korean statehood frames the twentieth century as one that came increasingly to be governed by international organizations and institutions, which worked on a participatory basis (as discussed in the previous chapter) that had one important pre-condition: members had to be organized according to the European model of the sovereign state (Dudden 8), and in a way that can be seen as distinctly *theatrical*. In the previous chapter I have already begun to discuss the international order as a theatrical order. In that chapter, the stress was on the postdramatic nature of participation and multilaterality. In this chapter I reflect on the precondition for that multilaterality, the recognition of personhood, as it concerns an aspect of that theatre that, instead, has *dramatic* characteristics. The precondition of state sovereignty effectively produces a script for the international community that must be followed: states must perform their sovereign statehood so that it may be recognized by the co-actors with whom they perform, namely other, already recognized states that already act in accordance with their scripted role. Moreover, it puts certain powerful, already recognized states more or less in the position of directors for that theatre, as for example Britain and the US who accepted the Japanese colonization of Korea, as well as the other states at the table of the Second Hague Peace Conference in 1907, who chose not to recognize the Korean envoys' credentials. In a way, at those conferences, states 'perform' the effectiveness of their (self-) government and the legitimacy of their representation of a population and a territory, i.e. their international personhood, to one another *and* to a global audience, theatrically.

The museum I discuss in this chapter allows for an analysis of both the theatrical and the dramatic qualities of the international order as it makes for a space of appearance, of representation, of states and statehood. For the most part, the museum's exhibition seems to be concerned with convincing the visitor of Korea's legitimacy as a state. However, because of the specific make-up of its exhibition, it also reflects critically on the theatricality involved, and even intervenes in it to propose a different constitution for that theatre, a mode of performance based on a different aspect of theatrical space than its representational nature, namely its corporeality. Established in 1995, the museum is located in the building that hosted the former Hotel de Jong, the hotel in which Yi Jun died. It can be found in the Wagenstraat, a street slightly to the south of The Hague's main shopping street, in an area known as 'Chinatown,' where the museum is presented as a monument. By taking this location, the

museum also commemorates the specific place of Yi Jun's death, as an index to the fact that Yi Jun once stayed there, where the museum's visitor now stands. Inside, the main part of the exhibition is a reconstruction of the hotel room in which the diplomat died, supplemented with artifacts that belonged to him, such as clothes he wore on his mission, notebooks in which he wrote, and a purse in which he carried his personal belongings. Whereas these objects that refer to Yi Jun's physical existence seem ornamental, relics unrelated to the question of his status as an envoy, to the question of Korea's status in the international order, or to the politico-legal theatre of diplomatic relations in general, they are nevertheless brought to shed light on those questions and on that theatre by the museum.

My reading proposes that the museum makes Yi Jun's deceased body meaningful in relation to the international order as a whole, for the way in which the museum locates itself emphatically on the map of what has become known, or what, indeed, brands itself, as 'the City of International Peace and Justice,' i.e. The Hague. As a city, The Hague hosts major international institutions, such as the Peace Palace, the International Criminal Court, the World Forum, as well as most of the foreign embassies located in the Netherlands. One issue that provokes my central question is the museum's emphasis on corporeality in general and on the facticity of place and space, which it poses as a reflection on the nature of the scene in which states traditionally represent their interests; a scene that is both abstract and concretized in particular spaces, such as conference halls. Another issue is the way the museum relates Yi Jun's corporeality and his death to the problem of recognition of states that structures the international order, and to the specific problem Korea grappled with at the beginning of the twentieth century, in being unrecognized. In what I see, thereby, as a postdramatic intervention in the diplomatic theatre of international relations, the museum raises the question that is central to this chapter: what is the status of the body of the state representative, and of embodiment in general, in the theatrical space of international relations that constitutes the international order?

In his philosophy of space, the French philosopher Henri Lefebvre distinguishes between different ways in which space relates to representation. He famously discusses "representations of space," "representational spaces," and "spatial practice" as a conceptual triad that allows us to understand the different aspects of space (33). If 'representations of space,' is "conceptualized space," which can be said to "order" relations through "signs" and "codes" – one thinks of maps and plans – and 'representational spaces' are "described" by artists and philosophers, which we appropriate through the "imagination," for Lefebvre, 'spatial practice,' connotes the daily interactions of people, living their social realities,

"embodie[d]" (33, 38). The triad delivers a distinction between "conceived" space, "lived" space, and "perceived" space, respectively. Despite the theory's seeming interest in the relation between space and representation, Lefebvre sets out to argue that space is foremost about "the body," in *The Production of Space* (40). Lefebvre emphasizes that space is a *lived* phenomenon, which gives it a reality that he separates from whatever meaning is attributed to particular kinds of spaces semiotically, that is, however we *represent* space. Indeed, he warns against understanding the triadic distinction as an "abstract model"; it is meant to "grasp the concrete" (40).

In his book, Lefebvre thus confronts Western philosophy's emphasis on the "Cartesian *cogito*," which in his understanding reduces all space to the epistemological, the mental, that is, to questions of representation, with the concept of a "practical 'I'," that is, a "fleshy body" that has "spatial qualities (symmetries, asymmetries) and energetic properties (discharges, economies, waste)" (61). Lefebvre considers the category of substance to be crucial, as the material out of which the cosmos is made up, that is, space, time, and energy. This focus allows him to introduce the material realm of the body into the theory of space, and in an everyday sense, that is, in the way in which people go about their practices, thereby "performing" the space they are in through, as he puts it, "the use of the body" (Lefebvre 33, 40). Things are not just passively in space, in other words; space is constantly being produced by people in their embodied relations to things.

With its interest in the corporeality of space, Lefebvre's thought informs an understanding of the shift postdramatic theatre made according to Lehmann, as I discussed in the previous chapter. The previous chapter focused on the way in which postdrama turned the space of traditional theatre, constructed on the basis of a strict separation between the space of the stage and the space of the audience, into what Lehmann calls a 'shared space,' a space of equal participation between actors and spectators. In this chapter, I focus on another aspect of the configuration of postdramatic theatre, namely, its shift from a focus on appearance and representation on stage towards a general awareness of the "corporeal logic" or physical nature of the theatre space as it brings together, in a relation of contiguity, the equally 'real,' in the sense of material, bodies of actors and spectators in one singular 'happening,' the performance (32).

If Lefebvre shifts Western philosophy's emphasis on a semiotics understanding of space to a more phenomenological one, in *The Production of Space*, Lehmann's notion that postdramatic theatre is about embodiment presents a similar shift specifically for the study of theatre and theatricality. Whereas dramatic theatre is about actors representing fictional roles

through different kinds of signs, and is thus subject to a semiotic mode of reading and of interpretation, postdramatic theatre calls for a different response from its audience: it is meant to be taken in not so much by the mind, but rather by the body. The notion that Lehmann proposes lies at the heart of postdramatic theatre, namely the 'undramatizable,' or the 'non-dramatic', is about what cannot be grasped semiotically, but requires an embodied experience and calls for an embodied response. Postdramatic theatre, according to Lehmann, is about the "vulnerability" of its players and of the performance as a whole (73, 165); it is a theatre close to the experience of trauma. Lehmann writes, in the traditional Freudian understanding of trauma, that postdrama is a theatre in which "the past" returns, "repeating itself" (73), but in the form of a physical, bodily manifestation that is traditionally understood to defy, interrupt, and undermine the modes of representation by means of which we normally work through the past and leave it behind us (12, 101).

At the same time, Lehmann ascribes to postdramatic theatre a "political" potential, or even intention, not necessarily because of the content or the thematics of what appears on stage, but rather because of "the implicit substance and critical value of its *mode of representation*" (178). Lehmann ascribes to art and theatre a potential to be transgressive of the existing order, which he calls "law," in foregrounding "the individual *par excellence*, the singular, that which remains unquantifiable in relation to even the best of laws," whereas "the domain of the law," for him, is "the attempt to *calculate* even the unpredictable" (178).[38] In its attempt to calculate, law can only grasp singular phenomena by representing them in its own, general, terms; law thus always requires a translation, i.e. a representation, of the real event into legal terminology. Postdrama, for Lehmann, seeks to return to a focus on singularity, on the event. But in order to do this, the representational logic of law must be disrupted, and it is in attempting to bring this about that postdrama can be seen as 'political' theatre, for Lehmann. The "political," then, is not itself political in that it is *about* politics, Lehmann writes, rather it consists in an "interruption of the law" (179). It is in that sense that the open nature of trauma, its resistance to closure, and its propensity to appear on the postdramatic stage, meets the 'traumatizing,' i.e. disruptive, potential of a theatre that intends to open up and resist closure. For Lehmann, this resistance to closure makes postdrama less a "performative" theatre in the sense that it can constitute a world (as law does). Instead, in creating openness, Lehmann prefers to call postdrama "afformative" (180).

[38] Lehmann uses the same terms to characterize law, here, as Derrida in "Force of Law," see 244 and further.

Although it is clear that this take on the political consists of a contrast between the openness of art and the closed nature of law, where the openness of art consists in a focus on embodiment and singularity,[39] it does not become apparent from Lehmann's study how this plays out in particular performances, despite his comments on these questions in the 'Epilogue' to *Postdramatic Theatre*. I propose that the museum I study in this chapter presents a way to discuss this political potential, precisely for the way in which it brings its 'performance' to bear on a specific politico-social reality. The Yi Jun Peace Museum attempts to intervene in the representational space of international relations and, by offering an experience of the corporeality of that space, to raise questions about the relation between the vulnerability of the bodies of diplomats, state representatives, and museum visitors, and the vulnerability of the unrecognized, i.e. unrepresented, even unrepresentable, state in the international order. In order to understand how it does this, I will first attend to the international order as it is a space of representation, and more specifically a theatre, by analyzing how the museum's exhibition performs Korean statehood accordingly.

2. The Yi Jun Peace Museum: Staging international personhood

Upon entering the Yi Jun Peace Museum, the visitor finds that the exhibition's emphasis lies on Yi Jun, the diplomat who died in the building that was formerly Hotel de Jong, and that now hosts the museum. Yi Jun is presented, from the outset of the exhibition, as a symbol for the sovereign statehood of the Republic of Korea (better known as 'South Korea').[40] The museum is named after the diplomat, for one, and a South Korean flag decorates the building's façade. The entrance room of the exhibition, where the visitor buys her ticket, is decorated with a large bronze bust of Yi Jun, with a plaque that calls him a martyr for Korea, with photographs of Yi Jun and his colleagues, and with another South Korean flag [image 1]. The entrance, with its focus on national symbols, gives the impression of being an embassy; it presents an office dedicated to the representation of one country, South Korea in this case, to another, the Netherlands. The museum's location in the city of The Hague strengthens this impression, as the city hosts 115 embassies of countries with which The Netherlands maintains diplomatic relations.

[39] For a comparable understanding of literature in relation to law, see Felman 8.

[40] Throughout the museum, the Republic of Korea is simply called 'Korea,' in what follows I do so as well, although I am aware of the questions of recognition that plague North and South Korea differently in the current situation, in which South Korea is recognized by most states, but North Korea is not recognized by important states such as France and the US.

Image 1. The Korean flag, a photograph of the three diplomats, and Yi Jun's bust in the museum's entrance room (photographs by Gabrian van Houdt).

The exhibition can roughly be divided into two parts: the first part, on the building's middle floor, presents the historical case, the Korean situation at the time of the Second Hague Peace Conference, and Yi Jun's death; the second part, on the top floor, presents diplomatic relations between South Korea and other states throughout the twentieth century, after the Japanese colonization ended and Korea gained independence. The exhibition's first two rooms after the entrance provide information about Japan's establishment of a protectorate in Korea, about the organization of a secret mission of the three diplomats by the Korean (ex-)emperor, Gojong, about the emissaries' journey by train through Russia and arrival in The Hague at the Second World Peace conference, and their failure to obtain admission there, despite the dispatch letters and the official credentials they carried [images 2 and 3].

Image 2. First exhibition room.

Image 3. Second exhibition room.

If the historical narrative presented downstairs, in the museum, is about how the other states participating in the Hague Peace Conference did not admit the Korean diplomatic mission and failed to recognize Korea's sovereignty in 1907, the panels on further diplomatic relations between Korea and European states in the twentieth century presented upstairs seem to display Korea's successful performance as an independent political entity today; an entity recognized by and in bilateral relations with others. Three of the rooms upstairs narrate and emphasize the bonds that have existed and still exist between Korea, the Netherlands, and other European states, in the twentieth century from before and after Korea obtained independence in 1945. The panels showing other states' recognition of that sovereignty could function, in that sense, as evidence for the museum's claim for the legitimacy of Korea's sovereignty; evidence by means of which Korea performs its statehood, represents itself as an international person.

The rooms present different forms of diplomatic relations. In one of the rooms, a glass case presents objects like pins and buttons, typically produced for memorizing special occasions, which represent the diplomatic ties the Republic of Korea holds dear [image 6; note the pin with the Korean and Dutch flag on the right].

Image 6. Commemorative pins and buttons.

In another room, two posters emphasize the relations between the Republic of Korea and the Netherlands [image 7]. The posters present typical symbols of the two nations: windmills, tulips, canals, the Palace in The Hague surround a recognizable map of the Netherlands on the left; on the right a poster presents the titles 'The Netherlands & Korea,' and 'Peace' in both English and Korean, next to pictures of what seem to be South-Korean national symbols. Both posters present sunny skies, or rather, skies with clouds the sunlight is just breaking through, symbols perhaps for a state of peace after conflict.

Image 7. The posters of Dutch-Korean relations (who made or commissioned the prints is not made clear).

One wall presents pictures of the Ridderzaal, the venue for the Second Hague Peace Conference; of the Peace Palace, the building that hosts the International Court of Justice, which was conceived during that conference; a picture of the three Korean diplomats; and a set of soccer-related photographs, one of Dutchman Guus Hiddink, who coached the South Korean soccer team during the 2002 World Cup (with unexpected success), and one of the Korean and Dutch flags side by side in a stadium. All in all, the collage of images presents official diplomatic institutions as well as the unofficial diplomatic institution of the international sports event. [image 8]. The images combined show both the site of the failed Korean mission, the Ridderzaal in The Hague, the Netherlands, and the ties that now exist between the two countries, with Guus Hiddink as a symbol of friendship.

Image 8. Guus Hiddink is shown in action on the bottom right.

The panels in the next room display Korean ties with other European states, such as Great Britain and France. The rooms function as evidence for the museum's argument for the legitimacy of Korea's sovereignty, stressing its right of legation, and evidence of other states' current recognition of that sovereignty and that right. And through emphasis, these rooms seem to attempt to performatively fortify these bonds.

In this context, it is noteworthy that the museum breaks with many museum conventions. As an institution that traditionally collects and publicly displays objects or artworks, a museum appeals to the general visitor and does so through particular recognizable spatial tropes: museums tend to be accessible, they often require the payment of a fee at a ticket desk, they present information in languages readable to a general public (e.g. a local language and a translation, for example in English), etc. The Yi Jun Peace Museum's entrance, however, appears unlike that of a regular museum: the museum's front door is closed by default. The visitor can tell that she is in front of a museum, because the name 'Yi Jun Peace Museum' features on the building's façade, but it is also decorated with a Korean flag. In order to enter, she must ring a doorbell, which is accompanied by a sign in Korean script, presumably illegible to most visitors who are not of Korean descent. When the door opens, she is invited to walk up the stairs and be welcomed at the top by the museum's founder and director, Lee Kee-Hang, and his wife Song Chang-Ju, who run the museum together. There is no ticket desk and no register; the visitor pays her five-euro entrance fee in cash to Lee himself. In exchange he gives her a leaflet with some background information about the museum.

This personal welcome, in the entrance hall with Yi Jun's bust and the South-Korean flag, in combination with the panels upstairs about diplomatic relations, makes the visitor feel not so much as though she is invited to look at an exhibition that pretends at showing a history objectively, or subjectively, for that matter.[41] Instead, she is more likely to feel that the exhibition enters her into a diplomatic relation – a relation about state representation, i.e. into the family of nations, as it were. For the visitor the task is clear: she is personally invited to participate in the memorization of the 1907 mission, and recognize the national symbols of Korean sovereignty, thereby participating in its representability. A demand is made on her to mourn Yi Jun, recognize his symbolic status and, consequently, Korea's legitimacy as a

[41] As in Bal's essay on the American Museum of Natural History in New York's Central Park, in *Double Exposures*, see 13-56.

sovereign state. In short, the museum 'stages,' or performs the part of, an embassy, thereby claiming, or confirming Korea's right to claim, its right of legation or self-representation in international relations.

In the previous chapter, I discussed how the legal theater is set up to perform law's legitimacy by referencing the sovereign underpinning of the state. The Yi Jun Peace Museum, located in the Hague, the city that hosts most embassies in The Netherlands, presents Yi Jun not to perform Korea's *internal* sovereignty to subjects of the Korean state, it explicitly performs Korea's *external* sovereignty to an international crowd. Whereas many national symbols work to invest and attach a people to their national sovereign, Yi Jun is explicitly staged as an *international* symbol of Korea's sovereignty. This performance asks for a translation of Goodrich's reflections of law's theatricality in the context of the state to the theatricality of the international order in which states enter into relations with one another. In the previous chapter I discussed the specific theatricality of the multilateral form through which sovereign states come together to devise law in the form of multilateral agreements. In the first section of this chapter, I have already suggested how the precondition of recognition introduces a dramatic element into that theatre, in which states have to perform the role of their sovereignty, the legitimacy of their claim to international personhood, and other, already recognized states direct that show in ways that Derrida would call 'roguish' (*Rogues* xiii, and see previous chapter). What is foremost dramatic about this performance, however, is the dramatic form of *personhood*, as personhood constitutes the representational logic of that performance, the means by which statehood, comparable to citizenship, can be seen as a public 'role.'

In the context of the nation state, the legal personhood of 'natural' subjects does not start with the naked fact of birth, with a being's natural or biological existence. It is only upon registration, when the biological being, the natural subject, receives a name and a unique identification number, that they obtain rights and duties under law, i.e. by means of which they are can appear before the law as *persons* (Witpaard). This name and identification number constitute the biological being's *representation* in the legal realm. In light of that, it is noteworthy that the etymological meaning of the word 'person' is the mask that was worn by an actor on stage, and by means of which they played their role, i.e. they represented their character in the fictional world of the drama. In her classical reflection on the political metaphor of personhood as one "derived from the theatre," in *On Revolution*, Hannah Arendt explains what she calls the "history of the Latin word *persona*":

> In its original meaning, it signified the mask ancient actors used to wear in a play. […] The mask as such obviously had two functions: it had to hide, or rather to replace, the actor's own face and countenance, but in a way that would make it possible for the voice to sound through. At any rate, it was in this twofold understanding of a mask through which a voice sounds that the word *persona* became a metaphor and was carried from the language of the theatre into legal terminology. (97)

For Arendt, the dramatic representation is constituted by the split between actor and role, which is mediated through the mask. In that sense, the actor can be said to have two bodies: his own body, a biological body, and the body of the character he 'cites,' as it were, on stage. The legal personhood of natural subjects, similarly, can be said to consist of such a duplicity: the subject bears his or her own, biological body, by birth and towards death, and that body 'cites' the public role, the *persona*, he or she is meant to play, i.e. the set of rights and duties in which personhood allows the subject to participate.

Based on the philosophy of the German legal thinker, Friedrich Carl von Savigny (1779-1861), the legal personhood of natural persons is often understood to be a fiction, and the person thus a "*persona ficta*," which law attributes to natural beings, so as to be able to hold them accountable or so that they may have standing before the law. This makes the being bearing personhood, as it were, "part fiction, part fact" (Witpaard). The question of the relation between the category of legal personhood, the 'fiction' part, and the biological being that a particular individual identification mechanism refers to, the 'fact' part, has been the subject of a long tradition of debate.[42] For Arendt, the pre-political phenomenon of the actor's body remains part of the performance constituted by the mask of personhood, of the fiction, though somewhat ambiguously so. In a passage that follows directly upon the one cited above, she writes:

> The distinction between a private individual in Rome and a Roman citizen was that the latter had a *persona*, a legal personality, as we would say; it was as though the law had affixed to him the part he was expected to play on the public scene, with the provision, however, that his own voice would be able to sound through. The point was that 'it is not the natural Ego which enters a court of law. It is a right-and-duty-bearing person, created by the law, which appears before the law.' Without his *persona*, there would

[42] See, amongst others, Esposito, Gaakeer, Korsten and Horsman, Parsley, and Witpaard.

> be an individual without rights and duties, perhaps a 'natural man' – that is, a human being or *homo* in the original meaning of the word, indicating someone outside the range of the law and the body politic of the citizens, as for instance a slave – but certainly a politically irrelevant being. (97, author's italics)

The construction of personhood thus hinges on a separation between a "right-and-duty-bearing person" and something that remains "outside of the range of the law and the body politic of the citizens," a "politically irrelevant being." But that politically irrelevant being, the voice that sounds when the person speaks, is at the same time constitutive of its functioning. When that right-and-duty bearing person appears in the 'court of law' Arendt mentions and affirms his or her position there in language, it will nevertheless be his or her own voice that sounds when he or she speaks, which refers to the pre-political being hidden beneath he mask. When they takes their tanding in the realms of law or politics, to represent itself, the person thus brings his or her body to bear on that realm.

In the normal course of a performance, of an actor or of a legal person, this aspect of their appearance, in court or in the theatre, is neglected, or perhaps even repressed. We forget about the actor; we take him for the role he plays in the fiction represented on stage. What happens, however, when this pre-political being, the sound of the voice, the body hidden by the mask, is foregrounded, rather than *what* is said, i.e. rather than what makes sense in the representational realms of law and politics? For Lehmann, the presence of the body of the actor in the role represented on stage constitutes the deconstructive potential of dramatic theatre, i.e. the point at which dramatic theatre already came apart, or that had always threatened it, the point that indicated its instability, long before the onset of the postdramatic tradition that thematized this threat, this instability (4). As discussed above, for Lehmann, the 'non-dramatic' moments in which the body of the actor or their voice is foregrounded in contrast with the representation in dramatic theatre harbors a political potential, the promise of a theatre, a world perhaps, that is more just, because it is not contained by the closed order of 'law,' as Lehmann sees it, and perhaps eludes the absolute nature of the sovereign power that underpins that order; a theatre or world that is aware of and sensitive to the vulnerability of the beings that make it up.

If the non-dramatic has this potential in dramatic theatre, may it also have that potential in the legal theatre? Could a 'non-dramatic' moment have the potential to make audible what are considered "politically irrelevant beings" – such as the slaves Arendt mentions, or, I suggest, the unrecognized 'non-state' or 'non-person' of Korea at the time of

the Second Hague Peace Conference – even if what they have to say does not make sense within the representation enacted on the legal stage? Given the potential Lehmann ascribes to the non-dramatic, corporeal element for dramatic theatre, the question that arises is how this connection between legal construction and empirical reality, fiction and fact, person and body, plays out in the field of international relations; how we can conceive of the state as a vulnerable being.[43]

In that context, the museum's exhibition can be read as an elaborate 'mask,' as it were, that signifies Korea's public role, its *persona*, in the international order as a state in relation to others. Indeed, we can understand the state as a personification, and we can understand state representatives as personifications of the state in turn, but the question is what kind of body or embodied being lies underneath that mask, if any at all, what kind of bare voice may sound through an incapacity to speak in the realm of international law and politics. With respect to that, the body of the state representative, of the diplomat, cannot be said to be directly connected to the state's personhood in the way that the body of an individual citizen is to theirs. Comparable to Ernst Kantorowicz' theory of the King's two bodies, the diplomat, the state representative, can be seen as a being with a double body: though his 'natural' body is mortal, subject to the processes of birth, aging, disease, and death, the 'metaphorical' body of the state, of sovereign power, which that body represents is itself unrelated to those natural processes. As for the King, this means that he is "immortal," because "legally" he can never die, as it is equally impossible for him to be legally under age, for example (Kantorowicz 4).[44] The diplomat, too, carries a political body, in so far as he represents the state. And similarly, the death of a state representative, such as a diplomat, has no effect on the existence of the legal entity he represents. Much like the biological being taking up the position of King, the natural body of the diplomat is completely replaceable.

The problem with international personhood, it seems, is that no 'real individual' hides behind the mask of the sovereign state as it represents itself. And yet, despite the lack of such a bodily reality, the loss of recognition, the trauma of the Japanese takeover, was *felt* by Korea; an experience they attempted to communicate in trying to gain access to the

[43] See Butler, *Giving an Account*, for a theory of intersubjective relations as marked by what she calls a "primary vulnerability" (99), the result of the fact that our bodies are by definition part of our social relations with others and we are thus "exposed" to others when we address ourselves to them (38). For Butler, this primary vulnerability or exposure potentially forms the basis for subjects' awareness of their responsibility to others. In *Precarious Life*, in the essay "Violence, Mourning, Politics," Butler attempts to consider such a primary vulnerability or exposure for relations between states as well, commenting on the United States' response to the attacks of September 11, 2001, but it does not become clear from her writing how something comparable to the individual subject's body can be located for states, i.e. how to read for that vulnerability.

[44] Kantorowicz interestingly calls these constructions "stage properties" (4).

Ridderzaal, the so-called 'Hall of Knights,' that functioned as the conference hall in which the Second Hague Peace Conference was held. The question that arises, then, is how the idea of an empirical reality beneath those personifications can be thought otherwise. Could an experience of the reality, the substantiality, of a state as something that can potentially be hurt, traumatized, nevertheless be made sensible? Or, in other words: could the international person's corporeality, which would have the potential to open up the drama of international relations to create an awareness of the vulnerability of states, be constructed in some way? In relation to this question, it is of interest that the museum presents Yi Jun not only as a symbol for the currently legitimate performance of Korean statehood, as a martyr who died to represent Korea as a state, but also indicates his corporeality in a way that is less *semiotic* and more *phenomenological*. Despite the problem of the diplomat's double body, the stress on his once physical presence in the building that used to be the Hotel de Jong, the fact that he died there, is presented in the exhibition as something that is nevertheless relevant to the order of international law and the relations it governs. How is the museum's stress on the reality of that place, and the once physical existence of Yi Jun to which it points, made to relate to the disembodied nature of international relations?

3. Theatre of vulnerability: The scene of Yi Jun's death, silence, and the demand for justice

The museum's third room from the entrance hall, downstairs, which also appears to be the exhibition's pinnacle, presents a shift in the 'rhetoric' of the museum's narrative.[45] As much as the museum is discursively concerned with the representation of Korea, in terms of representing the current state of the Republic of Korea through flags and other symbols, and with representing its history, and the history of the Japanese colonization, through documentary material and photographs, it also presents, by having located itself there, the site of an event that occurred as a result of the history it narrates: Yi Jun's death. The museum's third room from the entrance is the hotel room in in which that death occurred. It presents a reconstruction of what that room looked like at the time of Yi Jun's visit. Like the other rooms, this room features information panels, photographs, and photographed documents, but it also presents objects that belonged to Yi Jun, such as his clothes, his purse, and notebooks in which he wrote, by hand. Rather than his public role as state representative, the room thus

[45] For a consideration of museums as narrating instances, see Bal, *Double Exposures*. She writes that "an exposition is a representation" that performs a "that's how it is" (5). Because the exposition does so through "speech acts," in a particular "discursive situation," and through the use of "signs," it requires a semiotic reading, according to Bal (4).

emphasizes, in a sense, the privacy of the space in which Yi Jun's tragic death occurred, and Yi Jun's individuality, as well as, given the presentation of his handwriting, a reference to his once physical existence. So, one question is how the third room's emphasis on Yi Jun's individual body relates to the performance of the sovereign legitimacy of Korean statehood that determines the rest of the museum's exhibition. This raises the subsequent question how the objects, the references to Yi Jun's physical existence and his death, relate to the otherwise constitutive and symbolic representation of a state. Can they be seen as a cry of pain, perhaps even the formulation of a call to justice?

Supposedly modeled on the room in which Yi Jun stayed, this exhibition room contains old furniture, a made-up bed, a bedside table with a water jug, a clothes closet, a table with an old telephone, chairs, flowers that the museum's director refreshes every so often, apparently (he does so during my visit), and other hotel room props. It also features objects that refer to Yi Jun's life, such as the clothes he wore on his mission, which are hung on the wall [image 3], and his death, such as the tombstone that decorated his grave at the Oud Eik en Duinen cemetery from before his remains were transferred to Korea [image 4]. Furthermore, the room features references to Yi Jun's remembrance and significance for Korea. One of the walls presents a framed newspaper article about a visit paid by the Korean choir 'Little Angels' to that former cemetery and the song the Seoul National University Music School composed about him and which that choir sang at his grave for the occasion.

Image 3. Yi Jun's hotel room.

Image 4. Yi Jun's Oud Eik en Duinen gravestone

Surely some of the objects on display can be read at the level of the representation of the history it intends to tell the visitor. They can be read as evidence for the argument the museum makes to convince the visitor of the legitimacy of Korea's sovereignty. Many objects on display would support such a symbolic reading, too. But elements such as Yi Jun's clothes and notebooks have but little argumentative power in the sense of convincing the visitor of the legitimacy of Korean statehood, at least, not directly. If they can be said to 'argue' anything, it would be that a particular scene was once *real*; that the room was once a hotel room and Yi Jun was once alive, stayed there, that he once drank from the flask on display, that he carried the purse, that he wrote, by hand, in his notebooks, and finally that he died there. I read these objects not so much as evidence for an argument, as politically relevant *representational* objects, but as (quasi-legal) evidence of a material, *empirical* fact: that Yi Jun existed. As signs, the objects indicate their own materiality, their singularity, their physical reality, and thereby the physical reality of what was lost: the reality of Yi Jun's life. This aspect is emphasized especially in the objects that refer to Yi Jun, such as the clothes he wore and the objects that used to belong to him, but also in the objects that make up the hotel room reconstruction, and the gravestone.

A similar argument can be made for the photographs and letters, which not only symbolize the events of which the museum tells – the Japanese colonization of Korea, the failed mission of the Korean diplomats to attend the Second Hague Peace Conference, and Yi

Jun's death – but are also related to those events *contiguously*. In his reflections on the medium of photography in *Camera Lucida*, Roland Barthes argues that photographs relate to what they depict not only iconically – the photograph is the typical example of the icon as a sign – but also indexically. The "photographic referent," for Barthes, is not "the *optionally* real thing to which an image or a sign refers but the *necessarily* real thing which has been placed before the lens, without which there would be no photograph" (Barthes 76, author's italics). In photography, he writes, "I can never deny that *the thing has been there* (76, author's italics). For Barthes, the relation between image and referent consists in a contiguity: the photograph and the object or subject depicted are connected physically, materially, in that light waves emitted from that object or subject have touched the film. The photograph thematizes the reality of its referent, as it were, by virtue of its medial nature, i.e. through a relation of contiguity between the object that has been there, and the depiction, a result of a material process involving light waves. Usually, Barthes proposes, that reality, the "*that-has-been*" that defines photography, is repressed, or "experienced with indifference" (77). Some photographs, however, call forth the reality of their referent with a certain intensity.

I suggest that the relation of contiguity, the thematization of the past reality of the referent, Barthes ascribes to photography can be extended to other objects besides photographs as well, and that the museum's reconstructed hotel room conjures up the kind of intensity Barthes considers, an experience of what he calls the 'that-has-been'. Yi Jun's handwriting, for example, displayed in the notebooks, indicates the physical presence of *his* hand in the act of writing; he touched the paper, the pen, his handwriting is particular to his body. The same can be said for the objects that make up the hotel room reconstruction. They do not only feature in an argument on the basis of their factuality (facts that support an argument), the display is also about their *facticity*, the givenness of their physical reality, and the connection that establishes with the past. In contrast with the representation of the public sphere of international relations, the stress here is not so much on *personhood* as what is represented by Yi Jun, the diplomat, but rather or at least *also* on the body that was hidden by the mask that he wore to attend the conference, a body that is, at the same time, no longer there. In other words, the objects on display are indices to a *deceased* body. That no credence was paid to the mask has already been made manifest; the question that arises from the stress on Yi Jun's once physical existence is: what kind of experience does this produce in relation to the mask of international personhood?

As a reconstruction, the third room takes the visitor to a different time; instead of being in the present in which a past is narrated, represented, as in the rest of the exhibition, the

reconstructed room brings us back to the past, materially. Retroactively, Yi Jun's room emphasizes the fact that the other rooms, too, as well as the building as a whole, are part of the same site; that they mark the location of his trauma. Beside the objects, the building of the museum as such also indicates those events, and especially the site of Yi Jun's death, and enters them into a contiguous relation with the present as a place that can be visited, that is *presently* a lived reality, connecting the event of Yi Jun's death to the liveliness of the visitor. This contiguity is perhaps signaled most compellingly with the fresh flowers that are on the table in the room, which break open the historicity of the site and bring it into the present as a physically real and present space – a space in which flowers need to be taken care of, and refreshed occasionally, because they die. The room's strange temporality, the simultaneity of the past and the present, the dead and the living, that determines the room is about a dimension that is not so much concerned with representation; rather, it introduces an element that eludes representation, because it is particularly elusive: it presents a "presence-absence," that most iconic figuration of the *specter* (Peeren and Del Pilar Blanco 7).

Above, in my discussion of the conference as a theatrical scene, theatricality allowed for an understanding of the logic of representation and its limits. The third room's performance, I suggest, is also about these limits; that is, about a dimension that is *unrepresentable* in the theatrical scene of the conference, a dimension that is "non-dramatic," to put it in Lehmann's terms, and that, as such, has an undermining effect on drama, on representation (23). Taken as a symbol, through the narrative of martyrdom, Yi Jun has been made part of the museum's representation of Korean sovereignty. But whereas Korean sovereignty has been retrieved and that historical injustice corrected, as it were, Yi Jun's death cannot be turned around; his life, his body, are structurally irretrievable, and thereby 'undramatizable.' The absence of his body in the reconstructed hotel room indicates that irretrievability, that presence-absence that disturbs the drama. As such, there is an irresolvable tension between the presentation of Yi Jun as a symbol of Korean statehood, and the indices to Yi Jun's physical existence. The latter permanently indicates the situation of non-recognition, but this cannot become apparent at the symbolic level, in the diplomatic theatre. Indeed, and in spite of its intentions, the museum's exhibition of Korea's international personhood is *haunted* by Yi Jun's ghost.

For Lehmann, ghosts are amongst the figures that play a decisive part in the shift from dramatic to postdramatic theatre. In discussing what he calls "prehistories" of postdramatic theatre, Lehmann considers the influence of Asian theatre, or more specifically Japanese 'Noh,' on European theatre in the late nineteenth and early twentieth century (*Postdramatic*

Theatre 58). Noh theatre is characterized, in contrast with drama, as not being about plot action, but about "appearance", about "arrival" (58). Concentrated as it is on ritual and ceremony, Noh theatre "comes about through the embeddedness of human life in the world of returning spirits," writes Lehmann (59). Noh is a theatre in which "the dead" seem to be "speaking to us with august voices" (Maeterlinck in Lehmann 59). The contrast with the tradition of European realist theatre, one concerned mainly with the representation of characters, interpersonal relations, and actions that are recognizable to the audience, that was dominant in that time is significant. In that theatre, ghosts cannot 'appear,' as they cannot be represented in the logic of its "psychological motivations" (159).

Interestingly, in relation to the legal theatre, Arendt, too, connects the being hidden behind the mask of the *dramatis personae* to the ghostly in a somewhat enigmatic footnote to the passages I cited above, when she writes that:

> Although the etymological root of persona seems to derive from *per-zonare*, from the Greek ξωνη, and hence to mean originally 'disguise', one is tempted to believe that the word carried for Latin ears the significance of *per-sonare*, 'to sound through', whereby in Rome the voice that sounded through the mask *was certainly the voice of the ancestors rather than the voice of the individual actor*. (283n42, the first italics are the author's, the last is mine)

Though hidden, the body behind the mask seems to be of a spectral nature, not necessarily the 'individual actor,' but 'the voice of the ancestors,' a more spiritual and emphatically *plural* sound than that of the 'individual actor' carrying the mask of personhood. The voice that sounds through the mask, Arendt's footnote suggests, seems to be a presence-absence that haunts the representational universe of law and politics constituted by the dramatic category of legal personhood. If Arendt posits a spiritual, ancestral understanding of the 'natural being' hidden behind the mask, this raises the question as to what kind of power this attributes to the voice that sounds through it.

For Jacques Derrida, the figure of the specter has the capacity to make a demand for justice, to call for a response, or to comprise a call to responsibility, harboring thereby the promise for something, although not yet known or knowable, that lurks beyond the law, this law. In the foreword to *Specters of Marx*, he writes that his consideration of ghosts occurs "in the name of justice," and a justice that, distinctly, is "not yet *there*" (xviii, author's italics).

For Derrida, the figure of the ghost is even connected to the very possibility to think justice. He writes:

> No justice – let us not say no law and once again we are not speaking here of laws – seems possible or thinkable without the principle of some responsibility, beyond all living present, within that which disjoins the living present, before the ghosts of those who are not yet born or who are already dead, be they victims of wars, political or other kinds of violence, nationalist, racist, colonialist, sexist, or other kinds of exterminations, victims of the oppressions of capitalist imperialism or any of the forms of totalitarianism. Without this non-contemporaneity with itself of the living present, without that which secretly unhinges it, without this responsibility and this respect for justice concerning those who are not there, of those who are no longer or who are not yet present and living, what sense would there be to ask the question "where?" "where tomorrow?" "whither?" (xviii)

It is trauma's emphatic 'non-contemporaneity with itself of the living present' to which Derrida ascribes the power to unlock a "respect for justice," to elicit a "responsibility." Whereas Derrida focuses on temporality, famously musing on the quotation uttered by Hamlet right after meeting the ghost of his father, that "the time is out of joint," others have taken up the discourse of spectrality in relation to space as well. In *The Architectural Uncanny*, for example, Anthony Vidler has attended to the spatial dimensions of haunting and its association with "displacement" and "the out-of-place" (Peeren and Del Pilar Blanco 10). If a call for justice, for responsibility, can sound in the 'out-of-joint-ness' of time in the apparition of a ghost, it may sound also in its 'out-of-place-ness.'

The 'out-of-jointness' of the museum's temporality discussed above mirrors the way in which its space presents a displacement, a being 'out-of-place', in two ways: on the one hand, the room displaces, unhinges, disturbs, the representational logic of the rest of the building's exposition; on the other hand, and more importantly, the museum presents a displacement, a disturbance, in the City of International Peace and Justice in which it ambiguously figures as a counterpoint to the representational spaces of the international order, as something ambiguously in-between an embassy and a museum, something part of and something critically reflecting on the sphere of relations between states. Stuck in between his natural and his political body, the one irretrievably dead, the other brought back to life after having been in suspended animation for half a century – half monument, half man, or rather,

half dead man – Yi Jun figures in that space as a well-maintained, carefully nurtured reminder of Korea's traumatic past, in the present. Yet is Yi Jun, or rather his ghost, able to make a demand for justice, to call for responsibility, there?

When the Koreans appeared at the door of the Ridderzaal without masks, or, rather, after they had had their masks torn off by the other states present, they could not be heard in that legal theatre in a way that made sense in the representational universe of international relations. They were silenced, symbolically. However, and because of the specific nature of international personhood, that silence was also of a *physical* order, in that the physical reality hidden by the mask of international personhood is not the reality of an individual and not materially linked to an individual body. If the slave, the 'politically irrelevant being' mentioned by Arendt in one of the passages cited above still has the bodily capacity to cry out by means of its voice, the implication of the state's disembodied nature is that an unrecognized political entity, an entity seeking to claim statehood but not granted the ability to represent itself by other states, seems unable to make itself heard at all. It is only after obtaining recognition, and thereby obtaining the right of legation, i.e. the right of diplomatic representation, that states can 'voice' their concerns; a voicing that, unlike in the case of the national citizen or the national 'politically irrelevant being,' as Arendt puts it, remains purely metaphorical. This incapacity to make itself heard indicates, on the one hand, that the state was always already a ghostly being. On the other hand, it emphasizes the doubly ghostly nature of the colonized (non-)state, in that it is both unable to represent itself discursively *and* is plagued by a physical incapacity to cry out. It seems as though, because of its specific predicament, much like the dead and unlike the slave, the unrecognized state cannot express its pain through a *cry*, but only *through the silence of its inability to cry*, which painfully redoubles its inability to represent its interests.

With respect to that it is telling that Yi Jun's story, or rather, the references to his life and death, are made in a space that we can see as *aesthetic*, more than *legal*. If the Korean diplomats could not make themselves heard *at* the conference, there is a way in which the Yi Jun Peace Museum's exhibition supplements and amplifies that scene of silencing and makes it *audible* as such. Indeed, whereas the other rooms are filled with representations of discourse, such as letters and photographs of events and of the conference as it occurred, in the Korean diplomats' absence, in the Ridderzaal, Yi Jun's room, and especially the indices I have discussed, harbor an emphatic silence. Unlike the ghost of Hamlet's father, Yi Jun does not speak, and the room does not provide him with words, as for example through the figure

of *prosopopoeia*.[46] Rather, and in being itself of a non-linguistic order, the space of the room merely makes heard the solemn silence of his absence.[47]

Silence is related to *noise*, purely physical, as it were, a supposed lack of emission of sound waves that never actually materializes, because it would be immaterial. In that sense, silence is precisely what cannot physically be heard.[48] Although the rooms of the Yi Jun Peace Museum are naturally filled with background noises, it is the Korean silence, and in turn, the state's physical inability to bear witness to its traumatic past that is nevertheless emphatically made to *sound* in the museum. Understood as such, the stress on the physical nature of discourse implied by this silence would have the undermining potential on the representation of international relations the museum is otherwise about, the same potential Lehmann ascribes to the corporeality of the 'non-dramatic' in a dramatic performance.

Albeit not individualizable, or 'voice-able,' the indexical performance of Yi Jun's room affirms that a physical reality nevertheless lies behind the mask of international personhood that allows states to represent their interests to one another, albeit only perceptible in the lack of sound waves that comprises the silence of an entity unable to represent its interests. By presenting Yi Jun's silence as an audible (as it were) inability to cry out about the trauma suffered by the physical reality that lies behind the torn-off mask of Korea's international personhood, the museum performatively, or to speak with Lehmann, 'afformatively,' presents this physical reality as one that should *matter* in the sphere of international relations. Or, rather, and through its exposition of voicelessness, the museum *demands* that it matters, and silently addresses that demand to the city that hosted the Peace Conferences of 1899 and 1907, and that still hosts many of the institutions that are fundamental to the international order, expecting a response.

Yet, as I propose in the final section of this chapter, the museum does more than this, still, or does this in a way that is specific to the nature of museums as a *theatrical* institution, i.e. an institution for which the relation between stage and audience is fundamental. The non-dramatic element of Yi Jun's death that disturbs or undermines the drama of international relations is supplemented with a postdramatic performance that makes that demand felt in a way that involves the audience, the visitor.

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[46] On the figure of *prosopopoeia* as the ultimate trope of poetic discourse, see De Man 67-82; and for a discussion of this text in the context of the question of the ability of the dead to bear witness, see Davis 78-79.

[47] On the truth of the witness' silence and the impossibility of a language that bears witness to the traumatized subject's incapacity to speak, to his experience of desubjectification, see Agamben, *Remnants of Auschwitz*.

[48] See Serres for an exploration of the physical, material nature of noise as the ground of perception. For Serres, silence is already "hubbub" (13), noise, and as such, "there is no silence in a strict sense" (61); for a more metaphorical consideration of silence, or the inability to speak, in relation to trauma, see Felman 10-53.

4. Diplomatic sensibility: The political potential of the museum space

As I discussed in the introduction to this chapter, Lehmann suggests that postdramatic theatre is political for its potential to open up or produce a new politico-social reality by means of its specific 'mode of operation.' At the same time, he emphasizes the turn towards the audience postdramatic theatre took, as discussed in the previous chapter. In this section I consider the museum, *qua* museum, as such a mode of operation, i.e. as a postdramatic spatial manifestation that relates visitors to the tension between the drama of Korea's personhood and the non-dramatic element of Yi Jun's death in a way that opens up the otherwise closed sphere of international law and relations between states. Surely the 'audience' of visitors are called upon to witness the 'show' of Korea's legitimacy, but they are also made to be involved in and even to co-constitute a more encompassing *performance*.

The Yi Jun Peace Museum, as a museum, is a particular spatial construction that seeks to relate visitors to whatever is being exhibited. As a museum, the Yi Jun Peace Museum caters to a general public, not just to an audience of state representatives, to international society. The Korean envoys, and perhaps the museum's director insofar as he puts on a diplomatic show, want recognition, of course, for its legal consequences. But although the museum is about international society, and although it addresses international society in a way, being located in The Hague and performing the role of an embassy, it does so while it addresses *anybody* visiting the museum. My aim is to consider the relationship of this 'anybody,' of the general public embodied in the museum visitor, to the sphere of international society, the sphere in which states relate to one another by virtue of their representatives, their governments, a sphere from which the general public is by default far removed. The issue at stake, then is, how and in what way the public addressed by the museum *qua* museum can respond to the vulnerability the museum presents.

How the museum vests a relation between the general visitor and the sphere of international relations is exemplified in a specific, and slightly out-of-place, engraving that adorns one of the walls of one of the upstairs rooms that also features the posters shown above. Whereas most displays in the museum are about relations between the state of South-Korea and other European states, and are of interest mostly to state representatives, the engraving breaks with this representational logic and seems to appeal to me – a Dutch national – more directly, and more specifically; it is entitled 'Spaensche Furie tot Antwerpen' [image x].

Image x. Engraving of the Spanish Fury.

The 'Spaanse Furie,' the 'Spanish Fury,' also known as, 'De plundering van Antwerpen,' or 'The Sack of Antwerp,' began on 4 November 1576 and was one of the greatest massacres of the Eighty Years War (1568-1648), also known as The Dutch Revolt, or the Dutch War of Independence, at the start of which the Dutch no longer wanted to obey their sovereign, the Spanish King, Philips II, who ruled over the Habsburg, or Spanish Netherlands and whom the Dutch came to define as a 'tyrant'.[49] In the early years of the revolt, due to a delay in payment, mutinying Spanish troops destroyed Antwerp and killed many of its inhabitants in the most horrifying ways over the course of four days of pillage. After the event, the seventeen provinces of the Dutch Republic united over their revolt against the Spanish (up until then not all provinces had been rebellious) in the Pacification of Ghent. The print shows the naked, mutilated and hung bodies of both men and women in open buildings on the left, and Spanish soldiers killing more, in the foreground, seemingly removing clothes and mutilating genitalia, and other soldiers still, in the background, hunting down men, women, and children in the streets of Antwerp.

The engraving thus shows a scene from the history of the Dutch Republic. That scene seems at first far removed, spatially and temporally, from both the history of the Korean

[49] See Fagel for a historical account of the Spanish Fury. Fagel also comments on the Hogenberg engravings of the Spanish Fury, which historians have used as a source of information on the events; see 105-106.

mission presented downstairs and the diplomatic relations between Korea and the Netherlands and other states presented upstairs. It appears out of place in the museum's narrative about Korean sovereignty and also in relation to the indices to the traumatic event of Yi Jun's death. It does not refer to diplomatic relations per se, but by presenting a particular traumatic event in the history of the Dutch Republic appeals to them by inviting a comparison between the Netherlands under Spanish rule and Korea under Japanese. But it makes that demand at an affective level: it asks the visitor to recognize the potential vulnerability of a state through a depiction of the vulnerability of its subjects. The relationship established through the image, then, is not so much a diplomatic relationship, i.e. a relationship between 'full' international subjects, but rather a relationship that comes into being through the recognition of a condition of vulnerability, a relationship that is about the potential of losing subjectivity, personhood, or of not being granted it. That relationship is vested not on the basis of the visitor's representational status – her being a national, belonging to, and thus representing, a state that participates in international society – but on her being an embodied being, her having a body that can be harmed. Tellingly, however, the image mediates between the potential vulnerability of any individual person and the potential vulnerability of states, performatively rendering the latter experience perceptible through the former. The image, in other words, establishes for the visitor an experience of the vulnerability of a state that is left without an ability to represent itself by means of an experience of her own vulnerability.

When Mieke Bal considers the museum as the '*mise-en-scène*' or "stage" of the artwork, and the museum visit itself a "drama," in her article "Exposing the Public," she does so because she seeks to stress what she calls the *public* nature of art (1112, 1130). The museum, for Bal, at least in the texts in which she considers it in theatrical terms, is first and foremost about vesting a relation between art and its (multiple) spectators, its public (*Traveling Concepts* 97; *Double Exposures* 3-4; "Exposing the Public" 1099). But whereas for Bal this relation, mediated by the museum, is always discursive, narrative, about representation, I have argued that the relation between actor and audience that structures the exhibition as a *mise-en-scène* in the case of the Yi Jun Peace Museum is not only concerned with representation. The relation the museum vests between the objects it stages and the audience, is rather concerned with the embodied nature of the visitor as she traverses the space of the museum as a material, corporeal, reality – that is, with the fact that the visitor shares the same space as the objects that act on her, because she has a body – and with the kind of sensitivity this opens up. It is through the emphasis on the substantial, corporeal nature of space that the Yi Jun Peace

Museum breaks, as it were, the fourth wall with regard to the visitor. Through the way the museum affects her spatially, this visitor, otherwise excluded from the 'narrative,' the symbolic world the museum is about, namely the international order, becomes involved in a scene that thereby transforms into something else than what it is about, or that even potentially transforms what it is about.

I have already discussed above that the Yi Jun Peace Museum and its exhibition are emphatically spatial. As said, the museum is located in the city that hosted the Second Hague Peace Conference and that still hosts many important institutions of international law. Through its location and the reconstruction, the museum emphasizes the place and space in which the diplomat Yi Jun died and the place and space of the international order. As such, the museum's exhibition bears material relation to the history it presents – it is in the same place and takes up the same space as that history. At the same time, it is contiguous with the space in which the international order is still being determined through the institutions that are located in The Hague, thereby relating spatially to its object, the world of diplomacy and international relations it is about, the society of states.

The structure of the exhibition itself, however, is spatial in another way. Conform museum conventions, the information in the exhibition is organized per room and per floor. But different from most museums in which such rooms and floors are often unrelated to their subject matter in any direct way, there seems to be a special emphasis on the reality of those rooms and to the reality of the physical presence of the visitor in relation to those rooms. The reconstruction of Yi Jun's hotel room, as I argued above, makes this point especially in that it emphasizes its own materiality in relation to the reality of the event that took place in that room. The visitor does not only read the panels or look at the photographs, she also walks through the rooms and, as such, she is physically present in the space and at the place where, more than a hundred years ago, Yi Jun was found dead as a consequence of the failed diplomatic mission. She can only experience that tragedy by virtue of her having a body, being alive, able to move through those rooms and be in that building. In that sense she is different from the kinds of subjects the museum is about, and to whom it addresses itself, as states do not have bodies that can move through rooms or visit museums, unless through a representative. That representative, then, following the museum's emphatic and reflexive spatial logic, can also only experience the reality of the museum's space, the historical tragedy it indexes, by virtue of having a body. The representative is not only addressed *qua* his representational function – as the director intends – but also *qua* being an embodied being.

The relation between the objects on display and the spectators looking at them is not one that emphasizes scopic distance and representation, but thematizes physical contiguity; a corporeal relation between bodies. The reflexive presentation of the exhibition's spatiality and materiality emphasize the contiguity between actor and audience and between what is 'on stage' – what is being represented – and what is 'off stage' – what is excluded from representation – and stresses their being co-present in a shared reality. Read in this way, the museum is at one and the same time *about* the structure of representation of international society, and it is about how that representational order is also, at the same time, *part of* a reality that it sought to exclude or suppress: the everyday embodied reality of individuals. That reality has little to do with the symbolism of nation states and the representation of sovereign statehood or international personhood, but it is a reality that might nevertheless have something to say to that symbolic and representational order, because it allows for the expression of a demand for justice on the basis of an experience of vulnerability. The museum might even transform that order by introjecting a new mode of sensibility, a new form of experience, into it.

In this light the museum as a whole, or at least parts of its exhibition, can be seen as an aesthetic act, a postdramatic performance that, with Lehmann, can be seen as having a political potential because of its 'mode of operation'. In order to consider the potential of this specific performance, and elucidate thereby Lehmann's thoughts on the political potential of postdramatic theatre as a whole, I now turn to the work of Jacques Rancière, because of the specific terms he chose to consider the political potential of art, namely, the 'distribution of the *sensible*'. Although the sensible for Rancière is about representation, I propose a rereading of his reflections on political art through the lens of Lefebvre's phenomenological conception of space and Lehmann's emphasis on the corporeal nature of theatre. Rancière's thoughts on the (re)distribution of the sensible can be read to be about the senses of what Lefebvre calls a 'fleshy body' instead of representations that play out in mental life, about the phenomenological rather than the semiotic.

In his work on the politics of aesthetics, Jacques Rancière defines art, or what he calls, "aesthetic acts," as "configurations of experience that create new modes of sense perception and induce novel forms of political subjectivity" (*The Politics of Aesthetics* 3). His well-known conceptualization of the "distribution of the sensible," by means of which he designates "the system of self-evident facts of sense perception that simultaneously discloses the existence of something in common and the delimitations that define the respective parts and positions within it," clarifies what he means by the political: a domain that is 'in

common' and yet not accessible to all (*The Politics of Aesthetics* 7). What he calls 'the sensible,' then, designates a potential commonality, which is at the same time distributed in a particular way in a particular social system. It also emphasizes that this commonality consists in sense perceptions, that is, in what can be seen, heard, touched, etc. Perhaps, however, we can understand 'the sensible' not only as *what* can be sensed (i.e. what is representable), but also as the bodily capacity of sensing. Playing on 'the sensible', we could understand it as the body's 'sense-ability', ability to sense, or sensitivity, to physical experiences, i.e. that it can be affected, that it *is* a body, or with Lefebvre, a 'fleshy' body with energetic properties.[50]

For Rancière, however, the sphere of politics is a representational sphere, one based on people's ability to express themselves in the language that sphere is constructed through. With reference to Aristotle's definition of a political being as a 'speaking being,' he makes clear that not everyone 'possesses' the language of government. In other words, Rancière stresses that not everyone has access to the political. Aesthetics, for Rancière, is a way of reading for the accessibility of the political as a space of representation, a distribution of public roles and 'positions':

> The apportionment of parts and positions is based on a distribution of spaces, times, and forms of activity that determines the very manner in which something in common lends itself to participation and in what way various individuals have part in this distribution. (*The Politics of Aesthetics* 7)

This delimitation of space, time, and activity, which the "distribution of the sensible" denotes, allows for a reading of the spaces of international law, by means of which its particular distribution becomes clear. The space of the Ridderzaal, for example, which hosted the 1907 Hague Peace Conference, was structured by a clear logic of inclusion-exclusion, a logic that established the international social order. That space, and that time, and the activity of conferring, was accessible to representatives of those states understood to be sovereign on the basis of the European model, as I discussed above. But if we understand 'the sensible' and its distribution as not only being about representation, but also about the corporeality of experience or affect, this changes the way we may understand the categories of 'space, time, and activity' Rancière considers the categories of the common and the political from

[50] For this corporeal, energetic understanding of affect, see Brennan. Brennan connects affect to space when she considers it an "atmosphere" in a "room" that can be felt bodily and that can be read in the form of physical and biological changes (1).

representational to corporeal categories. Indeed, for Lefebvre, 'space, time, and activity' (though he uses the term 'energy' instead of 'activity') are also substantial categories subject to embodied experience. In contrast with the conference, the museum emphasizes this second understanding of the sensible.

The space of the museum contrasts with the space of the Ridderzaal in that it is an *aesthetic* space. On the one hand we may say that it redistributes representational space in that it opens up a particular experience – of diplomacy and international society – to a new audience, to a different set of individuals, and those individuals may have a part in the experience, in the distribution of the sensible, in a different way than in relation to the space of the conference. The museum's visitor, who is structurally alienated from the space of the conference which was open only to the representatives of sovereign states, is made the subject, the addressee, of a diplomatic question by the museum's exhibition. Although in accordance with the logic of the international symbolic order the museum's visitor cannot participate in what is 'common,' as Rancière would put it, to the international 'community,' we may say that the museum installs *a new mode of commonality*.

In one way, which would incline more towards Rancière's thought, its appeal to the general visitor could then be seen as an attempt to democratize the field of international law. In that reading, the museum reimagines that field's common as one in which anybody can participate. But the museum's emphasis on corporeality also does something else. To the extent that the museum appeals to its visitor to become aware of her vulnerability, through her identification with the print about the Spanish Fury and the comparison it elicits with the Korean situation under Japanese rule, as well as through her experience of Yi Jun's corporeality, it emphasizes and elicits a particular ability to sense one's embodied condition as a vulnerable one. The museum thus not only opens up the sphere of international law, international society, to a new audience of non-state representatives, of 'anybodies,' non-participants in the international order, its stress on the physical fact of a body's vulnerability opens up the international order's participants to a new sensibility as well. To play on Rancière's formula: the museum not only redistributes the given sensible – relations of state representation – to new subjects, the general public of the museum visitor. It also distributes a new sensibility to 'old' subjects – state representatives and diplomats –, namely, a bodily sensibility or sensitivity that was not yet part of the social order that constitutes the relations between states and their representatives.

As Rancière puts it, in his essay on theatre as an art form, 'The Emancipated Spectator,' performances render people "anonymous" (*The Emancipated Spectator* 17). This

namelessness, literally, can be understood as the corporeal reality that underlies whatever identification or public role an individual may bear as a *person*, and in that lies a particular potential, namely "the capacity that makes everyone equal to everyone else." (*The Emancipated Spectator* 17) Regardless of whether she is or is not a state representative, the museum has the potential to have the visitor experience a vulnerability that she shares with Yi Jun, with any diplomat, and with any other visitor to the museum, as well as the vulnerability she shares with a state that has lost its personhood. That equalizing awareness allows for the demand for justice presented by the museum's emphasis on Yi Jun's death, and the expectation of a response that lingers in its exhibition, to find an audience. By taking up the space it does in the city of The Hague, by occupying the place of the site of Korea's historical trauma that Yi Jun's death in the former Hotel de Jong, and by emphasizing the corporeality of this spatiality as well as of its visitors, the museum performs the introjection of a demand for justice based on a corporeal awareness into a field for which that awareness had, thus far, been structurally ignorable, and makes it *sensible* there.

3. The Infanticide Trial of Lucia de Berk: Computational Media, Expert Discourse, and a Desire for Re-Dramatization

1. The introduction of new media in the trial: disturbing the dramatic theatre of the word

In the previous chapters I considered the spatial and corporeal nature of law's theatricality. I discussed two 'objects': the multilateral constitution of the International Criminal Court, as reflected in the botanical garden project of its courthouse design, and the Yi Jun Peace Museum as postdramatic reflections on the traditional, dramatic spatial logic of law, as it is constituted by sovereign power. I argued that in their own ways, those objects, the iconic garden and the museum, present critical interventions in the field of law, analogous to how postdramatic theatre has critically intervened, according to Lehmann, in the field of theatre. They do so in order to project new modes of expression for the problems with which they grapple, thus presenting postdrama's political potential in relation to law. This chapter shifts the emphasis to the *medial nature* of theatre and theatricality. I analyse a legal case, a famous or infamous Dutch criminal trial that, so to speak, spun out of control hysterically almost from the very beginning. The course this case took, I argue, was determined by the introduction of forms of evidence that, because of the media technologies involved, disturbed the traditional dramatic logic of the trial that depends on verbal and visual forms of proof.

At the outset of *Postdramatic Theatre*, Lehmann suggests that the drama-undermining force presented by theatrical practice from the 1970s onwards arose out of a confrontation between different media. Theatre, traditionally a "mass medium" in that it used to attract a large audience, clashed with new, post-"Gutenberg galaxy" technologies and this brought about the shift in the "mode of perception" that determined the development of postdramatic theatre (16). For Lehmann, "new media" are predominantly of a visual kind; he names "(electronic) images," "television," and "film," and discusses their influence on postdramatic theatre (168). These media have served postdramatic theatre as sources of inspiration, he writes, for example in the form of references to "pop culture" and the "day-to-day business of the entertainment industry" (168). But the postdramatic effect stems from the form that arises out of the clash between theatre and the media technologies involved in these cultures, of video technology and electronic imaging, for example. Lehmann writes:

> What is postdramatic about these attempts is that the quoted motifs, gags or names are not placed inside the frame of a coherent narrative dramaturgy but rather serve as musical phrases in a rhythm, as elements of a scenic image collage. (168)

It appears, then, that the nature of the new visual media, when they exercise their influence on theatre production, is to fragment and disrupt the coherency of the fictional universe that was characteristic for dramatic theatre, replacing it with the fractured mode of collage and emphasizing the affective mode of rhythm.

Scholars have commented on the influence of new visual media on the legal theatre as well, with specific attention being paid to the technologies involved in those media.[51] To be clear, I am not concerned here with the influence of 'the' visual media on trials, in the sense of reportage on the procedure. That concerns a different dynamic I have discussed in the introduction to this dissertation, in which I reflected on the dramatic nature of the strict control legal institutions usually exercise over media reportage. Instead, my concern here is with the influence of visual media on trials when they are introduced as forms of evidence. Cornelia Vismann, for example, has considered the introduction of surveillance video as evidence in the courtroom specifically as posing a clash between that technology and the dramatic logic of the trial, in her essay "'*Rejouer les crimes*': Theatre v. Video," which I briefly discussed in the introduction of this thesis. In the essay, Vismann proposes that the trial is theatrical, or as she emphasizes, dramatic, because of its discursive nature (125). Comparable to Lehmann's understanding of dramatic theatre, the legal drama, too, consists of the construction of a coherent narrative, a plot about a past deed that becomes apparent through the discourse of the characters involved. In the trial, that past act is always traumatic, according to Vismann, in that it constitutes a breach of the symbolic order constituted by law; a breach that must be repaired in order for society to keep functioning (125). Vismann takes up the definition of a criminal proposed by legal scholar Pierre Legendre, who wrote a book on the same trial that concerns Vismann in her essay, as someone who has 'fallen out of the symbolic order,' and needs to be reinstalled therein, through language. A crime thus presents a disintegration between the criminal and his or her ability to speak, or rather to make sense, i.e. to be part of the social world, the legal order, constituted by the law that he or she broke

[51] For other discussions of the influence of visual media on law see, amongst many others, Feigenson; Goodrich, "Europe in America"; Felman; Ronnell; Stone Peters, "Theatrocracy Unwired"; Sherwin et al.; and Tait.

(129). The legal procedure, Vismann argues, seeks a translation of a past deed into a narrative. More importantly, once that narrative is construed, what is required is that the accused tells that narrative in the first person singular, which allows for the public assumption of responsibility for the past act. A trial is set up, so Vismann writes:

> in order to integrate the deed and the first person singular. Confronted with the alleged weapon used in a crime, for example, an accused is supposed to say, "I took the knife," rather than "the knife arrived." In court it is always possible that the truth is known already. The law insists, nonetheless, on articulating the sentence in the first person. Its jurisdiction depends on this speech act, this assumption of authorship of a deed. It aims at converting *it* into *I* – what the law calls responsibility – so that the legal business of the court can be performed. This conversion, toward which the confrontation with things as a synecdoche of a past deed aims, is the ground of punishment. (130)

The evidential scene, then, is about staging the question of responsibility in distinctly *personal* terms, i.e. in the form of a first-person utterance, or *enunciation*. In accordance with linguistic theories about the constitutive effect of discourse, as in the work of Emile Benveniste, the first-person utterance is what brings about the very idea of a self, or in other words, establishes subjectivity.[52] The form of selfhood established discursively in the evidential scene, in the conversion of 'it into I' at which that scene aims, Vismann proposes, is a necessary precondition for the attribution of a deed to a person, for the establishment of responsibility, for judgment. Whether it makes sense to proceed with a trial at all, hinges on a suspect's potential responsiveness to judgment, which, in turn, is determined by their ability to relate to their case as subjects, capable of relating to themselves in the form of first-person, constitutive statements. Vismann does not discuss this, but for the same reason a successful appeal to the defense of insanity leads not to the judgment of acquittal, i.e. a not-guilty verdict, but to a complete discharge from prosecution of the matter; the case will not come to judgment *at all*. It appears that the lack of subjectivity implicit in insanity robs any legal judgment of its sense. Although it may be the case that guilty verdicts are reached regardless of suspects' admission to or denial of guilt, the dramatic form of the procedure presents a strong appeal to the constitution of the suspect as a subject.

[52] See Benveniste (1986 and 1971).

According to Vismann, the trial functions as a social scene of *identification*. First of all, it is the accused who is meant to be identified as the perpetrator of the past deed, of course. But the drama of the trial also sets up a scene of identification for the audience of legal subjects. The narrative constructed during a trial is a *social* narrative, about what is permitted and prohibited for the subjects of a given society; about good and bad, as it were. As the verdict is meant to reinstall the identified perpetrator in society, in the symbolic order constituted by the law that was broken in the criminal act, it also shows the trial's audience their position within that order, a position in which they are then meant to recognize themselves. It is through drama, Vismann's essay suggests, through the public, staged and spoken assumption of the deed by the accused, that a trial can come to a satisfying conclusion, to a judgment that repairs the social order constituted by the law that was broken in the criminal act.

In an argument that resembles Lehmann's logic, Vismann suggests that the introduction of video evidence in the courtroom in the trial of Denis Lortie, subject to discussion in "'*Rejouer les crimes*'," troubled the coherency of narrative to which the trial normally aims. The trial's failure was brought about, according to Vismann, because of the specific nature of the medium through which the main piece of evidence in Lortie's case was presented. A surveillance camera had recorded Lortie's acts and a video of this footage was shown at the trial. The showing of this video in the otherwise theatre-like courtroom, with its dramatic procedure, led to a fundamental disturbance. For Vismann, this was a consequence of the very nature of video, especially surveillance video, as a medium. Because of the technologies involved, that of recording and replaying, surveillance video presents a *repetition* of the past trauma, which hinders the therapeutic conversion at which the trial aims, because it disturbs the accused's ability to associate himself with his past act. The knife in Vismann's hypothetical example has a representational relation with the past act, through the figure of metonymy: a relationship based on contiguity, or nearness, since the knife was near the scene of the crime; and the figure of synecdoche: a part—whole relationship, in that the knife was part of the crime.[53] Because of the repetitive nature of the recording- and replaying-technologies involved, however, the video could not function as a representation. Consequently, the courtroom events could not constitute a *mimetic* event, i.e. a drama that

[53] See Culler 214-221 for a discussion of the rhetorical force of metonymies as stemming from the power and persuasiveness of contiguity. Contiguity seems to have played its part in convincing the judges and public of the accused's guilt in the case I discuss in this chapter: she was often nearby inexplicable fatal incidents, which led to the assumption of a meaningful or intentional relationship, an association, between the accused and death.

establishes, by means of representation, what has really happened. Because replaying the recorded images of the traumatic act in court constituted a repetition rather than a representation of the past trauma, it kept Lortie in the traumatic mode, unable to discursively take up a subject position. All he is supposed to have been able to say in response to the images, according to Vismann's citation of the transcript, is the awkwardly grammatical statement, "…I cannot say this was not me, this was I. What more can I say?" (130).

The statement is marked by Lortie's inability to make up grammatically for the split between what in Lacanian terms is called the "subject of enunciation" – the fact that he utters the words in court – and the "subject of the statement," the Lortie to which the statement refers, as he appears to himself and to others, and as he is presumed to have acted in the past.[54] If grammar normally helps us integrate these versions of ourselves, the speaking and the one spoken about, Lortie's specific use of grammar here marks his lack of integration, the fact that he does not recognize himself. As the video had this effect on Lortie, Vismann takes the askew use of personal pronouns in his response to the images as a sign of his stuckness in the mode of trauma, i.e. in his mode of having 'fallen' out of the symbolic order. Vismann then argues that the video also had this effect on the trial as a whole, keeping it in a traumatic state of irresolution, and consequently on society as a whole, which remained without its therapy, its order-curative judgment.

Vismann's point about video and theatre thus echoes Lehmann's: when introduced into a theatre or theatrical environment that intents to *dramatize*, video (and by extent, perhaps, other forms of new visual media) has the effect of undermining the necessary production of discourse, of disturbing the coherency of narrative to which dramatization aims, and through which the trial's audience may recognize themselves as legal subjects in the trial as a visual scene. Whereas Lehmann celebrates this drama-undermining effect for its political potential on the one hand, he is also aware of the potentially traumatic and traumatizing effects of such a disturbed theatre, especially in cases in which the theatre production deals with traumatic material, as I indicated in the previous chapter. Although Lehmann's discussion of the introduction of new media in dramatic theatre occurs mostly in the context of his enthusiasm for the order-undermining potential of postdrama, I am concerned, in this chapter, with the potentially traumatizing effects of the introduction of new media in the legal theatre, set up as a way of dealing with the traumatic past event of a crime, and the ways in

[54] See Van Haute 37-42 for an explanation of these terms.

which a society grapples with a trial that fails to come to a satisfying resolution as a result of this; a trial that remains stuck.

Following Vismann's analysis, in the Lortie trial the legal drama was overcome, as it were, by the introduction of the surveillance video as evidence. The medium that figures in this chapter and clashes with the dramatic nature of the trial, however, involves a different kind of technology than that of words or images. In the trial that is subject to analysis now, the infanticide trial of Lucia de Berk, the nature of the media with which the legal theatre clashed and that interfered with the process of dramatization, were not of a visual but of a *computational* kind. This, as will become clear in this chapter, also pose challenges to the mimetic or representational nature of drama. The De Berk trial was characterized at the start, in 2001, as the gravest criminal trial in the history of Dutch law, while it is now predominantly remembered as the worst miscarriage of justice in that same history. De Berk was sent to prison for life in 2003 and was acquitted in 2010 after having served six and a half years in prison. It was a Dutch 'trial of the century,' one could say, for not only did the judges in the end conclude that De Berk had been wrongfully sentenced; the unique point of this miscarriage was that the judges who conducted the review hearing in 2010 had to conclude that no criminal acts had been committed at all.

The trial thus led to two extreme and extremely contradictory outcomes: it produced a very serious guilty verdict and a complete revision of that verdict that resulted in acquittal. It also led to two extreme and extremely contradictory definitions of one single case: the gravest trial and the worst miscarriage. It remains, as Ybo Buruma, a prominent Dutch jurist who presided the Commission for the Re-evaluation of Closed Criminal Cases that ultimately reviewed the De Berk trial, put it in his reflections on the matter, an embarrassment, a "scandal" and source of "discomfort," to the Dutch legal establishment, today (42).[55] De Berk is invited yearly to tell first-year students of criminal law of the potentially gruesome consequences of a miscarriage of justice. Yet many still feel that there is something fishy about De Berk; the public remains divided over the question of her guilt.[56] The indeterminability of the trial of Lucia de Berk, I propose in this chapter, was instigated by a

[55] This Commission was called 'Toegangscommissie evaluatie afgesloten strafzaken,' in Dutch, or, in short, 'CEAS'.

[56] My findings in this are based on conversations with jurists at conferences, notably with one Dutch criminal judge who informed me that she thinks De Berk is guilty and has gotten away with her crimes, as well as with fellow law students who attended the De Berk guest lecture in our first year Introduction to Criminal Law course. Yet in discourses of a more public nature De Berk is now presented as the innocent victim of an elitist and masculine legal establishment, or of hegemony in general; see, for example, "Innocently Imprisoned – TEDxAmsterdamWomen" and "NPO De VoorGeschiedenis – Witch Trials".

form of evidence that was distinctly non-dramatic and played a crucial role in the trial, namely a probability calculation.

Initially, De Berk was suspected of having murdered nine patients in the children's ward of the hospital in which she was employed as a nurse, on the basis of the calculation of the chance that one nurse would have been present at as many unexpected patient deaths as De Berk had been in a given time, given their roster. The main pieces of evidence in the first trial were the probability calculation and reports by toxicologists concerning some of the patients she was suspected to have poisoned. When the case was presented at the Court of Appeal, the prosecution changed the evidence on which it based its case. Although it was still mentioned, the probability calculation was no longer the main piece. Instead, the judges focused on the toxicological evidence, which, in essence, is also a form of evidence that is based on probabilistic reasoning. In both the first trial and the appeals trial, the statistical and toxicological evidence were in turn supplemented with evidence that consisted in a perpetrator profile established on the basis of reports by two criminal psychiatrists who analyzed De Berk while in detention, as well as some elements of circumstantial evidence, such as remarks she had made in her diary, notes she had once taken towards a crime novel she had intended to write, and the fact that she had obtained entrance to nursing school fraudulently. A perpetrator profile, essentially, is the calculation that a given person, because of a particular conglomeration of personality traits and biographical facts, may have an increased likelihood of committing a crime or of being or becoming a criminal. All three forms of evidence were further supplemented, on trial, with explanatory statements by experts in the particular fields of science from which the calculations stemmed, namely statistics, toxicology, and criminal psychiatry.

Even if probabilistic reasoning is by its nature *indeterminate*, in the De Berk trial it led to the opposite effect: a strong and widely shared conviction that De Berk must have been guilty of the patient deaths with which she had been involved. This conviction was strongly amplified by the general public sense that De Berk was the incarnation of 'evil,' a killer who posed as the embodiment of the angelical, caring woman, namely a nurse ('Nurse Death' and 'Angel of Death' being nicknames that were used in the press).[57] Moreover, because of her supposed interest in the supernatural, De Berk was often portrayed as a witch, that invested figure of fairytales and childhood fantasies and anxieties, and which, at the same time,

[57] Literal translation of the Dutch 'Engel des Doods' and 'Zuster Dood.' See image of newspaper clipping in De Berk 181, and see Ligtvoet, Van der Werff, and Visser, amongst others.

invoked a whole history of persecutions and trials of women who were at odds with society's expectations of them.[58] Even after De Berk's acquittal, as I mentioned above, the idea remained that something was not ok about her. Had she cunningly misled everyone; cast everyone under a spell?

De Berk and the way in which she was framed inspired a persecutory fury that was both legal and cultural, and that disturbed the dramatic form that normally structures the trial as a mode of mediation that is meant to counter any kind of fury, that intends to come in between, to assess, judge, represent and resolve. In this chapter I raise the question how the nature of the probability calculation as a mode of representation or specific mode of mediation, and the nature of the expert discourse which calculations need to be supplemented with, influenced the course of the trial and its spinning out of control. My question is: How would the nature of probabilistic reasoning and its numerical product as well as the expert discourse it elicits, both technical and scientific by nature, have contributed to the trial's leading to such contradictory outcomes, to such an incoherent narrative, and to such a schizoid division in its public reception?[59]

While the calculation was of a very specific roster-based kind in the De Berk case, probability calculations and risk assessments are used increasingly in the estimation of the chance that a crime may take or may have taken place in a specific time or place, or that a specific individual may develop criminal behavior because of their profile, or runs a risk of recidivism.[60] In the De Berk case, too, the calculation based on the roster was supplemented with evidence that testified of De Berk's criminal intent on the basis of what is called a 'perpetrator profile': circumstantial evidence of her character was presented to support the idea of the likelihood that she had committed the crime and the likelihood of her recidivism if she was to obtain a shorter prison sentence than 'life.' Similarly, the technologies involved in the use of DNA as evidence in criminal trials in general is also of a computational nature, as the matching of profiles with respect to their prevalence in a population involves a probability calculation; and something similar goes for the matching of fingerprints, as it does for the use of toxicological evidence (which also played a crucial role in the De Berk trial). These are all forms of knowledge based on estimations, probabilistic in nature (Van Asperen De Boer 14, 59).

[58] See 't Hart, Jaeger, and the image included with De Noo, amongst others.

[59] Van Asperen-de Boer also suggests that statistics played an "uncontrollable role" in the De Berk trial (17).

[60] See Harcourt.

Not only are probability calculations and other computation-based forms of evidence increasingly used in the criminal justice system, in modern times whole industries have gradually been reorganized around the use of computers, statistical analysis, and probabilistic reasoning, such as agriculture, logistics, medicine, as well as the insurance sector, which grew out of the very idea of calculating risks.[61] Indeed, notions of security/securitization, and practices such as the computer modeling of risk are increasingly determining governance in relation to decisions on the governmental management of climate (change) and public health. Statistical analysis, the modeling of risk, and probability calculations, all result in numbers or their representations in forms like graphs and tables; modes of representation that are fundamentally different from words and images we are used to processing in everyday communication.[62] The issue I address in this chapter – namely what effects these particular forms of representation bear on more traditional, dramatic, i.e. primarily discursive and also visual forms of representation – thus appears increasingly urgent to address if we are to make sense of these societal developments. At the end of the chapter I discuss three artistic responses to the trial, a play, *Lucy, Een monsterproces* (Hans van Hechten, 2008; 2018), which was produced twice, each time in slightly different form, and a film, *Lucia de B.* (Paula van der Oest, 2014). All three works appear implicitly concerned with the question of the limits and potential of drama as a form – a question that I propose goes to the heart of what was at stake in the trial of Lucia de Berk, and more generally, in the developments of our increasingly computerized, risk-oriented society.

2. *Too small a chance to have been simply a coincidence: Statistics in the trial of Lucia de Berk and the non-dramatizability of computational media*

The trial of Lucia de Berk started with a press conference in which Paul Smits, the director of the Juliana Children's Hospital in The Hague, in which De Berk was employed, announced the hospital's decision to press charges against De Berk. On 4 September 2001, a report was filed of a possible unnatural death of one of the patients in the hospital, and De Berk's involvement with the patient had been marked as suspicious (Rechtbank 's-Gravenhage paragraph 3).[63] Somehow, colleagues felt, De Berk seemed to be involved remarkably often

[61] See Galloway "Black Box, Black Bloc" 8, see Ricoeur's discussion of no-fault liability and the development of the insurance industry as a mechanism of securitization in "The Concept of Responsibility," 25-26, and Foucault's brief comments on the matter in "About the Concept," 15.

[62] See Galloway "Love of the Middle," and "Are Some Things Unrepresentable?".

[63] For overviews and discussions of the case see also Van Asperen De Boer; De Berk; Derksen.

with cases of death and reanimation. The hospital's director had started an internal investigation into De Berk's involvement with cases that had led to death or reanimation unexpectedly and inexplicably, and when nine such cases emerged for the period 2000-2001, he expanded the investigation to other hospitals in which De Berk had previously been employed (Rechtbank 's-Gravenhage paragraph 3). A long list was compiled, and by the end of September 2001, the hospital informed the police. The hospital's director, Smits, had calculated that the chance that a nurse would be involved with the amount of unexpected and inexplicable instances of death or reanimation as De Berk had been would be infinitesimally small: 1 in 7 billion. With a chance that small, the notion arose that De Berk's involvement could not simply have been coincidental, that she 'must have done it'. It is on this notion that the public prosecutor started their investigation *prima facie*, as though the calculation already provided for sufficient proof, even though no visible traces had been found – as is implied by the '*facie'* in *prima facie*, which means 'face,' 'encounter,' or 'sight'.

The hospital's method of grounding their suspicions in a probability calculation was taken up in the course of the trial. At the outset of the trial, the prosecutor accused De Berk of thirteen cases of murder and five cases of attempted murder. The prosecutors in the case adopted the notion that, with a chance as small as Smits had calculated, De Berk's involvement with as many unexpected, inexplicable, and sudden deaths as she had, could not have been coincidental. With each of these incidents, De Berk had been the nurse responsible for caring for and administering medication to the patients involved or had been the last one to have been seen to attend to them. And yet, no relevant pieces of evidence were found that proved that any one of her acts could be linked directly to the incidents; no one had caught her in the act and there were no visible, traceable marks (Rechtbank 's-Gravenhage paragraph 6). It was for that reason, the trial transcript explains, that the prosecutors decided to have an expert, dr. H. Elffers, conduct the statistical investigation that the hospital had already conducted inexpertly. Elffers' calculation of the probability that a nurse be involved with as many incidents as De Berk had been in the given period, led to the number that would carry such an impact on the trial, namely: in Elffers' estimation, based on a specific branch of declarative statistics, that chance would be 1 in 342 million (0,00000000292) (Rechtbank 's-Gravenhage paragraph 7).[64]

[64] See Van Asperen De Boer for a discussion of Elffers calculation (especially chapter 7), and for a more general discussion of the use of statistics in criminal investigations, with a special focus on roster-based calculations.

Elffers' calculation of the probability of the incidents was checked by other experts in the course of the trial's investigation and confirmed to have been "scientifically correct" (Rechtbank 's-Gravenhage paragraph 9). That conclusion, the court states in the trial transcript, was "adopted by the court" and made hers as well (Rechtbank 's-Gravenhage paragraph 9). On the basis of Elffers' calculation, the court judges that it deems "extremely unlikely" that the accused was involved with the incidents at which she was present "by chance" (Rechtbank 's-Gravenhage paragraph 11). Nevertheless, the court states, though there is proof of the chance of the accused's presence at or involvement with the number of incidents does not lead to any conclusive answers to the question if the accused also *caused* the incidents (Rechtbank 's-Gravenhage, paragraph 10 and 11). The question that arose, for the court, was if proof could establish that the deaths and reanimations with which De Berk had been involved were the result of a natural or unnatural cause. The transcript shows that the court answers this question for each individual case, starting with the case of the patient that led to the initial suspicion and accusation, the patient that died on 4 September 2001.

Despite the fact that in each case experts also presented doubtful conclusions, the court found proof for four murders and three attempts, mostly on the basis of toxicological evidence, leading to their decision on the accused's guilt. Importantly, the court adopted one of the medical experts' conclusions that, taken together, the cases establish a *pattern* of action. This conclusion was supplemented with reports by a psychologist and psychiatrist who observed De Berk in detention, while awaiting the conclusion of the trial, and assessed De Berk to have a personality disorder, as well as with evidence of instances of theft and forgery of diplomas that became apparent in the course of the investigation, remarks that De Berk had made in her diary, including remarks about the practice of tarot-reading she was interested in, and notes towards a crime novel involving murder that she had intended to write years prior to the events, as well as the fact that De Berk consistently denied her guilt, all of which counted towards the idea that De Berk had a murderer's profile. All in all, the evidence led to the sentence of life imprisonment – one that is rare in the Dutch penal system, given its focus on the reintegration of perpetrators in society.

Whether the calculations in the De Berk trial were correct or not has already been discussed extensively elsewhere, and is not my primary concern in this chapter.[65] I am

[65] See Van Asperen de Boer for her evaluation of the Elffers calculation and suggestions on how it should have been adjusted (109-110), and for her reflection on the definition of the central term, 'incident,' in that calculation and on the selection of data (117-122), as well as her remark that "without the right data the product of a calculation has zero meaning," or, in other words, that "flawed input leads to flawed output" (123) and her conclusions in general on the De Berk trial (200). See also Gill, Meester e.a., and De Vos.

interested in the fact that the probability calculation and its numerical product posed as a *frame* in the De Berk trial, and that this counted for the initial trial as well as the ones that followed. Indeed, when the case went up for appeal in 2004, it was explicitly mentioned that the probability calculation was no longer part of the evidence (Gerechtshof 's-Gravenhage summary). The toxicological evidence played a larger role, and the proof established for one incident was "chain-linked," as it was called, to other incidents for which proof was more doubtful (Gerechtshof 's-Gravenhage paragraph 5.40-5.48, 11). And yet, there are remarkable similarities between the kind of reasoning involved in chain-linking evidence, where proof for one incident leads to an increased likelihood of proof for other suspect incidents as well, as both work with 'prior odds' (Sjerps in Van Asperen de Boer 154). Furthermore, the idea of a 'chain' or pattern of behavior cohered with De Berk's supposed perpetrator profile, the idea that she was prone to kill – which, too, accounts for a 'prior odds' of sorts, for a reasoning on the basis of an estimation of chance or likelihood.

Ultimately, when the case went up for a review procedure in 2008, the presiding court established a new fact in relation to the toxicological evidence that provided the first link in the chain of the appeals case, which annulled the conclusions the earlier courts had reached on the basis of the evidence that had been at hand for them. Nevertheless, the fact remains that the evidential conclusions on individual incidents of poisoning were initiated by the probability calculation, by Smits' 'one in seven billion,' the inexpert calculation of a suspicion that led to the hospital's investigation of potential other past cases in the first place, and by Elffers' 'one in 342 million,' the expert re-calculation that first led the public prosecutor to investigate the individual cases for proof of criminal acts. In her reflections on the use of statistical evidence in the De Berk trial, legal scholar Céline van Asperen de Boer suggests that the influence of the statistical estimation may have become "uncontrollable" throughout the different stages of the trial (17, 101).

In a way, van Asperen de Boer appears to mean 'control' literally, here, in that the defense was unable to 'check' the evidence at the appeals trial. As it was never formally introduced, or as Van Asperen de Boer puts it, as it was "suppressed," no legal occasion was provided for the defense to raise questions about it (101). Nevertheless, Van Asperen de Boer points out that it can still be supposed to have played a role in the evidential reasoning, albeit only suggestibly, as the judges reported having actively decided not to take it into regard anymore, i.e. they actively negated and denied it (Gerechtshof 's-Gravenhage summary). Either way, I find Van Asperen de Boer's suggestion of 'uncontrollability' a sign of the influence of a factor that appears 'ungraspable,' that appears not to make 'sense' at the level

of conscious discourse about the case, be it of legal officials or of the general public, as well, i.e. of the unconscious effect a number may play in the judicial process of finding conviction in other forms of proof. How can we understand this 'uncontrollability' of the calculation and its product in the criminal court, its influence on the otherwise 'dramatic' judicial reasoning?

As I have discussed above, for Lehmann and Vismann, drama, be it of the theatrical or the legal variety, is by definition a discursive, i.e. verbal affair. The trial has traditionally been understood as a theatre of the word. Surely drama also contains a visual dimension. It presents décor and costumes, for example, one reason for Plato's famous distrust of theatrical *mimesis*. And Vismann's hypothetical confrontation of an accused and the knife with which he committed a crime, is also, surely, a form of showing. But for Vismann and Lehmann, it appears that drama consists primarily in the ability for the characters to tell of what was shown, i.e. in the conversion of events and experiences into speech (*Postdramatic Theatre* 22). For Lehmann, the verbal nature of drama is crucial for the constitution of a fictional universe, a narrative whole, which, in turn, is what allows for the production of a scene of recognition for the audience; in dramatic theatre, the audience is meant to recognize the fiction produced on stage as a reflection on or imitation of the world they inhabit (*Postdramatic Theatre* 21-22). For Vismann, too, the narrative construed through the discursive courtroom interactions of the different legal actors – the accused, the prosecutor, the judge – allows the trial's public to make sense of the social world they inhabit. Language, or more so, discourse, language used in communication between different actors, i.e. in intersubjective communication, is crucial in this. The question that begs to be asked, then, is: how does computational evidence relate to this ability to tell, to talk, that is so fundamental to drama, to law, and to society in general? Do a calculation and its numerical product allow for the intersubjective communication that constitutes the social? Or, how do calculations and the numerical products of calculations affect that constitutive communication?

In the introduction to his book, *The Interface Effect*, entitled "What Are Computational Media?," media scholar Alexander Galloway stresses the separation between the computer and its referent, the difference between reality and models or simulations of reality (11-12, 13). Surely, however, calculations are not the only simulations or models of reality that humans work with on an everyday basis, as textual and visual forms of representation, such as stories and films, may also be seen or understood as simulations or models of sorts. Yet computer simulations are simulations of a specific kind, different from textual and visual representations. In order to understand the specificity of computational

media and the specificity of the simulations they present, Galloway discusses the two different understandings of computational media that have tended to influence discussions in the field of media theory. On the one hand, those discussions have been influenced by Lev Manovich's idea that computer-based media draw from cinema, which is a more software-oriented understanding of the computer that focuses on the screen, the point at which user and computer interact (Galloway, *Interface* 3, 4). On the other hand, Galloway discusses Friedrich Kittler's influential notion that we must engage with the computer as hardware, as fundamentally a calculator that has the ability to perform complex calculations on potentially vast amounts of data, for example through the use of algorithms (Galloway, *Interface* 3). According to Kittler, to perceive the computer in relation to other known media, especially visual, such as cinema or film, is to fundamentally misunderstand how different the computer is as a medium from images and the realm of the imaginary, and Galloway underwrites this theoretical position (*Interface* 17). Rather than relating to images, for Kittler, the computer "consummates the retreat … [into] the purely symbolic realm of writing" (Galloway, *Interface* 17).

However, the computer's 'writing' is unlike the kind of writing that allows for or is mobilized in intersubjective communication, i.e. it is unlike spoken language or text. Indeed, Kittler writes, in the essay in which he attempts to present "a media history of numbers", that "mathematics only exists in cultures in which numbers are present as numerals," not just as 'words,' or 'sounds' ("Number and Numeral" 53). Another way to formulate this difference, implicit in Kittler's writing, is to distinguish between representation, which is done in words and sounds, and conversion, which is done through rendering "countable […] events into systems of equations" ("Number and Numeral" 54).[66] In other words, a different mode of language is involved in the "purely symbolic realm of writing" constituted by numbers and computations. Because of the influence of Aristotle's ontology on Western philosophy so far, Kittler argues, media theorists have only been able to conceive of media in terms of the oppositions between "form and matter, meaning and non-meaning, spirit and body" ("Number and Numeral" 55).[67] Mathematical or numerical formulations, however, are unlike the formulations Aristotle's ontology of matter and form allows for, as, according to Kittler, they "can effortlessly be proven" to be "without a doubt true" ("Number and Numeral" 56).

[66] Although Kittler uses the terms 'narration' and 'translation' to make this point, I find 'representation' and 'conversion' more apt and in line with his argument ("Number and Numeral" 54).

[67] See Kittler, "Towards an Ontology of Media," 24, where he proposes that Martin Heidegger was the first to break away from the Aristotelian tradition.

Numbers and computation are meaningless in a strict sense, then; they are categorically different from the kinds of objects that allow for questions of meaning, according to Kittler. They simply do not have anything to do with the relations between signifiers and signifieds, the study of which has dominated the tradition of humanities scholarship.

If a trial is concerned with past events, and with their narrativization in the form of a plot, a 'story,' in the sense that it is thus concerned with *history* and meaning, numbers, especially when they figure in probabilistic estimations, are *virtual*. Especially probability calculations are never representations of past events, of what *has* happened; they model what *might* happen or what *might have* happened, conditionally. They present models, or simulations, of reality (Van Asperen de Boer 47), but such models or simulations cannot be counted as *representations*, as mimetic devices. Consequently, it appears that numbers, the numerical products of calculations, cannot strictly lead to the narrativization or the mimetic representation of the past, but, instead, can only lead to more calculation. In her reflections on the relation between law, governance, and algorithmic or data culture, legal scholar Antoinette Rouvroy argues that numbers are *signals* rather than *signs*, which means that they cannot be interpreted to be meaningful in themselves; they remain at the level of information and its processing. "A signal," she writes, with reference to the semiotic theory of Umberto Eco, "is an element without signification, an element that does not mean anything in itself and thus can be calculable" ("The Digital Regime of Truth" 8), and perhaps *only* calculable. If we consider that the numerical played such an influential, even 'uncontrollable' part in the De Berk trial, this could imply that the trial itself, based as it was on the calculated chance factor, the number 1 in 342 million, rather than dramatizing a past trauma, turned into a calculator of sorts.

Based on Kittler's reflections on the nature of computation and numerals *in general* as purely symbolic, "inconceivable" by the means of word and image (*Optical Media* 229), and on Rouvroy's conception of numbers as 'signals' rather than signs, we may conclude that numbers pose a considerable challenge to the realm of meaning-making, narrativization and interpretation, and therefore to drama's intention to produce a coherent fictional universe. In the world of narrative, numbers are, in a way, 'nothingness,' or, as Kittler puts it elsewhere, they are "zero-dimensional" ("Numbers and Numerals" 227); numbers are 'not.' As 'not,' or 'nothingness,' numbers may pose as the point at which the meaning-making realm of the theatrical, consisting of the verbal and the visual, collapses or comes apart. Or, to put it in other words, faced with numbers, the drama that theatre seeks to produce might become meaningless.

And yet, although I underwrite Kittler's and Rouvroy's media-theoretical points about the structural differences between the numerical and the realm of intersubjective communication, or their points about the "inconceivability" and the "non-signifying" nature of numbers, the numerical played its decisive part in the De Berk trial by means of a *specific* number: the 1 in 342 million chance factor. Although the numerical might be non-signifying and inconceivable in general, the question is whether the same applies to a specific number. The De Berk trial shows, in my perspective, that although numbers may not carry meaning as such, *specific* numbers do impress us in particular contexts and bear their effects. How can we account for this impressiveness, or this potential to bear effects?

In his book *The Number Sense*, cognitive neuroscientist Stanislav Dehaene combines neuropsychological research into the ways in which humans process numerals with a cultural-historical account of the development of mathematics and number systems, and presents his thesis that humans are endowed with an intuitive sense of numbers. Dehaene holds that, although numerals are abstract and arbitrary, and our brains were not necessarily evolved to perform arithmetic, we *are* nevertheless endowed with the ability for the "intuitive representation of quantities" (Dehaene 7). It is somehow obvious to us that 10 is larger than 5, as it is also to a five-month-old baby, and to a rat, Dehaene shows on the basis of research (7). As humans, we share our sense of quantities with infants and animals. However, the question is if this intuitive representation, this 'number sense', counts for all kinds of numbers, as, for example, the kinds that are produced by more complex calculations, such as fractions or negative numbers.

Although mathematical language has helped humans to perform more complex calculations "beyond the limits of the animal numerical representation" that works through the approximation of quantities, something of that "primitive module" still influences our perception and conception of numbers and our ways of writing them down and speaking about them, Dehaene argues (66). Indeed, the apprehension of quantities plays an important part in the perception of large numbers, as it does with the smaller ones in the examples I presented above. Throughout the past half century, researchers have continuously demonstrated that we translate symbols into quantities, based on the so-called "distance effect" (Dehaene 74). Research subjects show a considerably longer response time in comparing numbers that lie closer together (such as 4 and 5) than they do in comparing numbers that lie further apart (such as 1 and 5). "The brain," Dehaene concludes, "does not stop at recognizing digit shapes," but rapidly recognizes digits' "at the level of their *quantitative meaning*" (74, italics in the original). The same results have come up in studies

that compare two-digit numbers, Dehaene shows (75). Our processing speed also slows down when we perceive larger numbers in comparison with smaller ones; i.e. size impacts our ability to have associations with numbers, to relate to them. Moreover, distance is relative to size in that we perceive the distance between 1 and 2 as larger than the distance between 8 and 9 (Dehaene 76). In processing numbers, it appears, we are concerned not with symbols but with *quantities* – we rapidly convert, translate, symbols into quantities (78), a tendency that, according to Dehaene is "automatic and unconscious" (87) – and we tend to perceive quantities *relatively*, i.e. in relation to other quantities (i.e. one number is larger or smaller than another number).

Dehaene's theory that we process numbers as quantities perhaps explains the difference between the sense we make of numbers, or the affect that numbers may carry, and the meaning we attribute to words and images. Words allow us to attribute meaning to past events, and images invite identification. Numbers, by contrast, *impress* us with the quantities they symbolize, with quantity being a substantial, corporeal category – it does not relate to individual human bodies (i.e. that can be represented in images), but the volumes and masses of more or less distinguishable, countable entities, with their sizes, shapes, contours, regardless of the nature of what is being counted – that impresses (adult) humans, infants and animals alike, according to Dehaene, in that they work at the level of our (primitive) biology.

Numbers and numerals then seem to have two sides. On the one hand, following the media-theoretical analyses of the numerical, they can be said to be 'not' in relation to the realm of sense-making. On the other hand, following the cognitive sciences' account, *specific* numbers do make sense to us and they do so in as quantities; they impress us as corporeal entities, as masses and volumes. If numbers according to the media-theoretical analyses are 'not,' we may suggest that, according to the cognitive sciences' account, they are 'blot'. As I pointed out above, the 'blot'-nature of numerals increases as numbers become larger, or relatively larger, and Dehaene argues elsewhere that it also increases when numbers become more complex, as for instance with fractions and negative numbers. Such numbers are even harder to conceive; they stain or blotch the audience's ability to perceive or make sense of the number as quantity. The number that played its part in the De Berk trial, the 1 in 342 million chance factor is a complex number – it is a fraction – and it comprises a very large number that is, at the same time, a composite, as it consists of the numeral 342 and the factor 'million'. The non-integer way of noting it, namely 0,00000000292, may have been even harder to make sense of. The number that played its part in the De Berk trial may have constituted a 'not' because of its very nature as a number, and it may have posed a 'blot' for

its audience because of its size and complexity. Although both 'not' and 'blot' can make sense in that they impress or affect us, if only negatively in the first case, as non-sense, and increasingly distortedly in the second sense, relative to size and complexity, both cannot be considered to pertain to the realm of the *meaningful* in the sense of allowing for narrativization, plotting, the construction of a story or history about past events, i.e. representation or *mimesis*.

Not making sense at all, or making sense as quantities, numbers may thus pose as a fundamental disturbance to the theatrical mode of drama, intent as it is on producing a coherent fictional universe, a narrative of past events that is scenic and constructed through speech uttered by individualizable, human characters with whom an audience can identify and empathize; i.e. a world of 'man' and 'meaning.' The nothingness of number, in face of which our signifying-capacities falter, and the substantiality of quantity, to which we respond by way of the biological make-up we share with such 'non-humans' as animals and infants, destabilize and undermine, perhaps annul and blot out, the modes of representation that allow for drama and that allow for the organization of a trial, the constitution of a social, symbolic order.[68] In that sense, they can be said to have a post-dramatic effect on the theatrical, be it of an artistic or a legal kind in the sense of Hans-Thies Lehmann's concept of post-drama.

Still, in the De Berk trial, the numerical product of the probability calculation, as well as the other forms of probabilistically reasoned evidence of the toxicological and psychiatrical kinds, were dramatized to a certain extent, namely in the form of the experts who appeared in court and in the preliminary investigation to *talk about* them. This poses the question of how the discourse of experts relates to the problem the numerical poses to the trial; or how it relates, in general, to the mode of drama with which the trial intends to construct a coherent fictional universe, i.e. an integrated social order.

3. *Expert witnesses and the criminal type in the legal theatre: impossible subjects and objects of perception*

What has become clear so far is that the probability calculation and the number, the chance factor, it produced played their critical parts in the trial of Lucia de Berk, and that these were not parts of the kind traditionally encountered in *dramatic* theatre. In the introduction to this

[68] On the infant (etymologically from the Latin '*in*' and '*fans*,' meaning 'unable to speak') as an exception to the 'human' because of its relation to language see Agamben, *Infancy and History* 4, and on the distinction between humans and animals based on the capacity for language, with reference to Aristotle, see Agamben, *Homo Sacer* 7.

chapter, I already indicated that the evidence in the De Berk case consisted not only of different objects of probabilistic kinds, but also of discourses that supplemented those objects, the discourses of experts commenting on the statistical calculation, the toxicological evidence, and evidence about Lucia de Berk's person based on psychiatric observation. First of all, the probability calculation, and the chance factor it produced, were supplemented by explications from statisticians who were heard at trial, and whose expert opinion was recorded in the trial report, in the Court's judgment, their conclusions, as they state, "taken over" by the judges (Rechtbank 's-Gravenhage paragraph 9).

Secondly, the statistical evidence was supplemented by two other key forms of evidence at trial, namely, the toxicological evidence that proved, for the judges, De Berk's criminal intent for one of the patients, and on the basis of which her criminal intent in other cases was inferred, and the psychiatric report on De Berk's supposed disturbed personality. As for the toxicological evidence, that too, like the statistical evidence, was presented through the judges' weighing a debate between different toxicologists who gave their expert opinion at trial or during the criminal investigation, a debate that is recorded in the trial report. As for the evidence provided by the psychiatrist and psychologist who investigated De Berk in the Ministry of Justice's psychiatric observation clinic, the 'Pieter Baan Centrum,' the judges cite the conclusion to that team's report on their observations of De Berk, and, as they state, "adopt" their conclusions (Rechtbank 's-Gravenhage paragraph 31).

Different kinds of expert opinion thus influenced the judgment in the De Berk trial significantly, and not only in first instance. The judicial review hearing in which De Berk was ultimately acquitted in 2010 was based on what was presented as a new toxicological fact that led to discussions among toxicologists about the evidence that played a key role in the first trial and especially in the first appeals trial, when the probabilistic evidence was suppressed. The judges in the review hearing decided that the judges in the earlier trials could not but have judged as they did, based on the evidence that was presented to them, but now that the toxicologists reviewed the earlier toxicological evidence, they found it to lead to a different outcome (Hoge Raad 2008 summary; Parket bij de Hoge Raad 2008 paragraph 6). From the trial report, however, it becomes clear that the toxicological evidence was debated already in the first instance of the trial, in that different toxicologists held different opinions about the nature of the evidence and about whether it could lead to any judicial conclusions (Rechtbank 's-Gravenhage paragraph 27-35). The toxicologists referenced in the trial report do not agree on these issues, as they did not, ultimately, over the course of the entire trial, in which the toxicological evidence led to two completely different judgments: guilty of infanticide or

innocent; life imprisonment or acquittal; the gravest criminal trial in the history of Dutch law or its worst miscarriage of justice. Besides, given that the public jury, as it were, is still divided over the question of De Berk's criminal intent, over the outcome of the trial, as I noted in the introduction, this raises the question how expert opinion, too, contributed to the impossibility to come to a coherent narrative in the De Berk trial. This question warrants an analysis of the nature of expert discourse and of how it influences judgment, in general, and in the criminal trial specifically, and how it relates to the dramatic theatrical form that, as I discussed above, is required for trials to come to a conclusive judgment. Or, as Michel Foucault puts it, in the question that provokes his 1975 seminar, *Abnormal*: "What kind of discourse is the discourse of expert psychiatric opinion?"

Foucault begins his 1975 seminar with a number of examples of such discourse, citing from expert opinions that were given at different criminal trials, and emphasizing that these discourses are, in our time, "at the very heart of our judicial system" (*Abnormal* 6). He explains that the discourses of experts are so influential in criminal trials, because of the so-called "principle of profound conviction" that was established in the eighteenth century that determines how judges come to their decisions, which was developed in response to the system of an "arithmetic of proofs" that preceded it. The principle of profound conviction, according to Foucault, makes explicit what the arithmetic system implied, namely, that an element of doubt is almost always part of judgment (*Abnormal* 7). Whereas the arithmetic nature of the earlier system implies the possibility of coming to a conclusion that completes a sum, with parts that make up a whole, that count up to one, the principle of profound conviction implies a probabilistic logic of likelihood and chance calculations that produce, by nature, fractions of wholes, i.e. that are constituted by a *lack* of certainty. According to Foucault, the element of doubt that is part of the principle of profound conviction paradoxically led to a distortion in the judicial process in that it has come to prefer the kind of proof that has "a demonstrative value, greater than other evidence," simply because of "the status of the subject who presents [it]" (*Abnormal* 10). Expert reports have such a relatively great demonstrative value because the expert status of the person delivering it confers onto it a "scientific status" (*Abnormal* 11). In the De Berk trial, the convincing effect of this scientific status of the speaking subject can be traced especially in the judges' reference to a second statistician, De Mulder, who is asked to comment on Elffers' calculation, and who is said to have judged them to have been "*scientifically* correct," a conclusion that is then adopted by the Court (Rechtbank 's-Gravenhage paragraph 9, my italics)

However, despite the intimate relation between truth and justice, which Foucault calls "one of the fundamental themes of Western philosophy" – a relation that is generally presupposed – it is important to note that Foucault argues that the actual "encounter" between justice and the truth that takes place when the expert appears in court leads to a sense of *alienation* rather than confirmation of this relation:

> Where the institution appointed to govern justice and the institutions qualified to express the truth encounter each other, or more concisely, where the court and the expert encounter each other, where judicial institutions and medical knowledge, or scientific knowledge in general, intersect, statements are formulated having the status of true discourses with considerable judicial effects. However, these statements also have the curious property of being *foreign* to all, even the most elementary, rules for the formation of scientific discourse, as well as being foreign to the rules of law and of being, in the strict sense, *grotesque*, like the texts I have just read." (*Abnormal* 11, my italics)

Rather than conforming to the rules of scientific discourses, although Foucault leaves implicit what these rules are, or to the rules of law, the discourse of the expert is foreign to both. As a discourse that both combines *and* negates the rules of science and law, at home in neither realm, the expert's discourse ends up being "grotesque" in character, Foucault argues, without specifying explicitly what the 'grotesque' means.[69] From his discussion, however, it becomes apparent that for Foucault, endowing a single individual with the burden to speak a 'truth' that has a potentially lethal effect, as it may lead to a death sentence, creates a sense of disproportion; no living being can carry that kind of power, Foucault suggests, without seeming too large, without seeming "unworthy" of it, and "ridiculous" because of it (*Abnormal* 13). This disproportionality makes the expert's discourse unrecognizable and thus alienating, monstrous, 'grotesque'.

Although Foucault does not further explore the implications of this foreignness, this alienating effect of the expert's discourse and the experience of discomfort or alienation it elicits, he does insinuate that there may be a psychoanalytical explanation for it when he suggests that others should take up the study of the expert as a "subject who is supposed to

[69] In the same session, Foucault also calls this discourse "Ubu-esque", referring thereby to the play by Alfred Jarry, *Ubu Roi*. Lehmann considers Jarry's play crucial to the 'prehistory' of postdramatic theatre, as it constituted the start of the historical avant-garde in theatre (*Postdramatic Theatre* 57).

know," referring to a Lacanian figure of thought (*Abnormal* 14). In *Enjoy Your Symptom!*, Slavoj Žižek takes up this challenge when he discusses the figure of the expert as a paradigmatic figure for the alienating postmodern world we inhabit, as the prominence of this figure produces a gap, in society, between scientific insight and common sense (249). Whereas Foucault concentrates on the fact that expert opinions constitute a discourse of truth in the trial, based on the scientific status of the subject who speaks it, Žižek argues that it is in fact impossible for the expert's audience to attribute truth to their discourse because of the nature of science. Science is a discussion, a debate, an open-ended process in which answers cannot really be provided (249). And yet we are constantly confronted with expert jargon that is "presented as objective insight with which one cannot really argue," insights that in and of themselves tend to be "untranslatable" into our common experience of "representable reality" (248-249). In taking in the discourses of experts, we are "bombarded," Žižek argues, with a multitude of "inconsistent and incompatible universes," which makes it effectively impossible to make decisions, to decide what is true, what is a fact, and, politically, how to act accordingly (249-250).

According to Žižek, this gap, this inconsistency, brings about a disintegration of society: because it cannot be "representable knowledge," scientific knowledge cannot function as what he calls the "symbolic Big Other," i.e. the structure of a shared social world (249). This disintegration, Žižek suggests, produces the "recourse to 'conspiracy theories'" (Žižek's use of scare quotes) as a "desperate way" to regain some grip on reality, to fill the gap between science and common sense, with some representable fabulation (250). But, Žižek points out, in this case it is not the conspiracy theorists themselves that are "paranoiac" or 'hysterical' because they cannot accept "(social) reality" (250). Instead, he suggests, "the problem is that this reality itself is becoming paranoiac" (250).

The De Berk case, too, led to the kinds of speculations that we may characterize as 'conspiracy theories' in the sense that De Berk was portrayed as having carefully planned her murders in such a way that she left no trace, and did so in a way reminiscent of supernatural powers or witchcraft. Following Zižek's thoughts, such speculations may have been a product not of paranoiac and hysterical speculators, but rather a sign of the fact that the reality on which they reflected had itself become paranoiac, i.e. fragmented and incoherent. Indeed, on the basis of the trial reports, the toxicological evidence in the De Berk trial can be understood as a debate over which the experts contributing remained divided. Individual experts' accounts present *partial* positions in that debate; parts of the kind that do not make up a whole. The report on the trial's first instance presents three different expert accounts: one

expert, dr. K.J. Lusthof, finds the evidence convincing, two others, Prof. dr. D.R.A. Uges and Prof. dr. F.A. de Wolff, doubt the validity of the methods that were used to obtain the blood samples that were used as proof (Rechtbank 's-Gravenhage paragraph 27-29). The judges side with the conclusions of the first. The review hearing presents a fourth expert, Prof. Meulenbelt, who, on the basis of new evidence that can formally be taken as a 'novum,' a fact that may lead to the reopening of an already closed case, who sides with the latter and whose account of the invalidity of the methods by means of which the blood samples were obtained ends up convincing the judges that there is not enough evidence to reach a guilty verdict on De Berk (Hoge Raad paragraph 4.3, 4.4). A letter written by a fifth expert, Prof. Tytgat, is mentioned as confirmation of Prof. Meulenbelt's conclusions, as is a letter written by one of the experts who witnessed in the first instance of the trial, Prof. de Wolff, who declares that he is glad to see his testimony on the matter confirmed by Prof. Meulenbelt's arguments (Hoge Raad paragraph 4.4.2.5, 4.4.2.6). At this point in the trial, the consulted experts agree. Over the course of the entire trial, however, expert testimony on the toxicological evidence has the character of a scientific debate with incompatible positions; in the one expert's universe, De Berk is a cunning murderer who intoxicated a patient, in the other expert's universe she may have had nothing to do with it. The knowledge needed to make sense of the matter of the digoxin poisoning that kick-started the chain of accusations in the De Berk trial is highly specialized; it concerns the nature of digoxin as a form of medication, as well as the nature of methods used to obtain blood samples, and requires the capacity to read specific graphs and tables that report a patient's medical condition. In form, nor in content, this is the kind of knowledge that can be made sense of intuitively, that can be translated, to put it in Žižek's terms, into common experience. Both the open-ended nature of the debate – despite that it appears to be resolved with the judgment in the review procedure – and the specialized nature of the expert knowledge required for the judgment of the digoxin poisoning, disturbed the course of the trial.

This disturbance can be explained in the terms Lehmann proposes to understand the main shift that takes place with the onset of postdramatic theatre as a shift in perspective. As I outlined already in the first part of this chapter, at the outset of his book, Lehmann proposes that postdramatic theatre describes a shift in the "mode of perception," following what he determined as the shift out of the traditional "Gutenberg galaxy, from a "linear-successive" mode of perception that was "centered," to a "multi-perspectival" one. For theatre scholar Maaike Bleeker, Lehmann's point about perception hinges on his equation of drama with perspective, and the metaphor he uses that postdramatic theatre consists of a "multiplication

of frames," which she reads in relation to the narratological concept of focalization (*Visuality in the Theatre* 11-12, 27).[70] Bleeker explains that one of the important subject positions theatre offers its spectators is not that of the external observer, the kind of seer addressed by dramatic perspective in painting, but rather that of an "internal focalizer": the spectator is invited to see what happens from the point of view of an 'I' seeing onstage, to see as if from the point of view of one of the performers/characters (27). In terms of perspective, the difference between dramatic theatre and postdramatic theatre hinges on the question whether the internal focalizer of a performance provides a stable, singular, centered frame so that a coherent fictional universe may ensue, or if the internal focalizer is, instead, fractured, multiplied, destabilized. If the relation of focalization is always one between a subject and an object of vision (*Visuality in the Theatre* 28), in postdramatic theatre the subject of vision has become disturbed, multiplied, which entails a hindrance for the spectator to take up that subject's position and see what happens on stage from his or her point of view. It leaves the spectator lost between the different frames.

Because of their fragmented perspective on whatever issue is up for judgment, I propose that the increasing role played by the experts in the criminal trial can be interpreted as having brought about such a shift in the legal theatre as well, from the dramatic, centered, framing perspective of the judge, to a multi-perspectival, postdramatic one in the figure of the expert. If we follow Foucault's characterization, we can say that expert witnesses provide a perspective in a criminal trial, but not one that can present a stable 'frame,' for the fictional universe, because the introduction of an expert opinion in a trial necessarily introduces a multiplication of frames. Knowing that his or her account of the matter is a partial account and taking into account the the ultimate openness of scientific debate, the expert's perspective always implies the existence of other possible accounts, and thus of other perspectives. The perspective of the expert thus cannot become the kind of framing, determinative perspective that is necessary for the production of drama. The expert could focalize, but not in any way that his or her perspective constitutes a coherent fictional universe, which is what dramatic theatre intends to construct.

[70] See also Bleeker, "Look who's Looking!," 29-34 for a critical discussion of Lehmann's references to perspective in his discussion of postdramatic theatre. In *Visuality in Theatre*, Bleeker introduces the matter of perspective with reference to the work of Hubert Damisch, who has argued to consider perspective in painting in comparison with the logic of *deixis* in language, i.e. the use of personal pronouns and markers of time and location such as 'I,' 'you,' 'here,' and 'there,' typically called 'shifters,' empty forms of discourse by means of which a speaker constitutes him or herself as a subject because they allow him or her to relate to his or her person (19). This is relevant for the discussion in the first part of this chapter, where I proposed, in my discussion of Vismann's essay and Benveniste's concept of enunciation, that the law needs a subject, as someone who can relate to itself, in order to produce the drama of judgment, to organize responsibility in society.

Not only verbally, then, but also visually, the expert witness introduces a gap, an openness into the matter that is to be assessed. In order to take a decision, judges must leap over that openness, the gap that is constitutive of the logic of science and of the particular debate at hand in the case. In the report of the first instance of the trial, the judges can be traced to do just that. After the presentation of different expert opinions on the validity of the toxicological evidence, the judges decide to go with just one of the perspectives, namely the one that allows them to use it as proof of intoxication (Rechtbank 's-Gravenhage paragraph 30). It is precisely on this point that the case ends up being reviewed and the guilty verdict overturned in 2008. What the De Berk trial makes apparent, then, is the way in which the gap, the openness, in expert opinion, and the lack of a centered, framing perspective it implies, remained to haunt the trial and disturb its course.

Implicit in Foucault's work on the question is that it is not only the expert, fragmented subject of focalization, and his or her discourse that appears foreign and grotesque, there is something alienating or uncanny, too, about the object of the expert's discourse, of his or her fragmented perspective, namely the criminality or 'criminal type' he or she discourses and focalizes upon. Although according to law the trial should be concerned with offenses – Foucault cites the Napoleonic Code of 1810, which provided the basis for the Dutch criminal code of that time as well, which states that "Only breaches of the law defined as such by the law can be punished" (*Abnormal* 15) – expert opinion introduces a series of things that are not the offense itself but rather "forms of conduct" and "ways of being" that can be presented as its "cause, origin, motivation, and starting point" (*Abnormal* 15). Expert opinion turns attention away from the offense and to the individual for whom having committed an offense can be constituted as a "trait" (*Abnormal* 16). Following the examples Foucault gives of expert psychiatric statements given in trials from 1955, the traits of the offender can be ones such as a person's love of disorder, or their inability to integrate in society, traits that cannot be understood as illegalities or offenses in and of themselves, but that can, from a "psychologico-moral point of view," be linked to "criminality" (*Abnormal* 17-18). Indeed, Foucault explains, "the aim" of such discourses "is to show how the individual already resembles his crime before he has committed it" (*Abnormal* 19). The discourse of the expert, Foucault argues, thus constitutes the point at which the trial is confronted with the introduction of a series of ghostly "doubles" (*Abnormal* 14). This raises the question how this doubling as it pertains to the object of expert discourse affects the trial in turn.

If the psychiatrists turn the trial's attention away from the *crime* and towards the *criminal*, as Foucault argues in *Abnormal*, he adds elsewhere that this attention turns the criminal into what can be seen as a *type of person*, an answer to the question of "what one is" rather than "who one is," where 'what' can be analyzed according to general categories, a typology of danger ("About the Concept" 2). In a way, the first of these effects, the turning of attention to the criminal rather than crime, can still be said to follow the dramatic logic of the trial as theorized by Vismann and discussed above. Vismann argues that the trial is set up as a public therapeutic scene that constitutes the symbolic order, in the vein in which Foucault ends up arguing, in *Abnormal*, that the expert psychiatric opinion used as evidence in the trial ends up constituting the conception of the 'normal,' as opposed to the deviant. The focus on the criminal as an individual, as a person, allows for that public therapeutic scene to function, to produce order, normality, because the trial sets up a scene of identification for the audience by staging the impersonation of the crime, of the abnormal. The mirror scene set up by psychiatric discourse by means of which a criminal is made to resemble his crime as a *person*, will render a kind of portrait of the criminal individual, with the effect of setting up a mirror scene for the audience of the trial as well that raises the question if there is a resemblance between the criminal and themselves. In being made to face the criminal, the deviant, the person who has fallen out of the symbolic, of society, the audience is meant to identify with, and thus to reconstitute, their position *within* that society, that symbolic; i.e. to identify as law-abiding, normal citizens. Hans-Thies Lehmann has characterized this identification mechanism, the scene of empathetic understanding of an audience of citizens with the representation of society on stage, as one of the fundamental tenets of dramatic theatre (*Postdramatic Theatre* 21).

However, the second of these effects, the turning of attention towards the criminal as a *type of person*, has a slightly different effect in that the sciences involved in assessing criminals as 'types' – psychiatric, criminological, anthropological – employ forms of comparative analysis and of statistical and probabilistic reasoning that effectively turn the object of this reasoning into something that does not quite make up a *person* or *individual* with whom a scene of identification is possible. Whereas Foucault hints at this issue in *Abnormal*, when he discusses, briefly, the "conditional" nature of expert discourse, he does not pick up the nature of the sciences involved in the fields of expertise up for discussion in *Abnormal* itself. He does reflect on this in his 1978 essay, "About the Concept of the 'Dangerous Individual' in 19th-Century Legal Psychiatry," when he discusses the fields of science that developed to study criminality in the nineteenth century in terms of "danger," or

even "risk." In "About the Concept," Foucault frames the development of an increasingly fertile relation between psychiatry and criminal law in the nineteenth and early twentieth century as "a mechanism for the defense of society" (13), and relates it to developments in the field of civil law with regard to the idea of "no-fault responsibility," or the responsibility for posing a risk that arises out of, for example, negligence or inattention (15). As such, it becomes apparent that the kind of psychiatry Foucault is concerned with in this study is not that which deals with the analysis of individual patients' psyches, but that which, like criminal anthropology, becomes interested in more general accounts of sickness in populations in biological, genetic terms, and in the idea of "degeneration" ("About the Concept" 11). Such matters that concern 'populations' rather than 'individuals' and virtual events rather than actualized ones require and are produced by statistical and probabilistic methods of analysis. These scientific methods are characteristic not of the regime of discipline, of "disciplinary societies," which succeeded the "societies of sovereignty," but of what Deleuze called, inspired by Foucault's later work on biopolitics, the "societies of control" ("Postscript on the Societies of Control" 3-4).[71]

The play of resemblances between the criminal individual and his 'type,' as it is based on statistical analysis of populations and probabilistic assessments of risk, appears to produce a split, then: the research object is approached not only as an individual, with a particular life story, but also as a collection of traits that allow for comparison to a population of individuals who present similar traits. On the basis of such a comparison, the expert can then make an assessment of the likelihood of their presenting a 'danger' to society or the 'risk' of becoming a criminal. This traits-based analysis and the probabilistic assessment cut up the individual into data, which turns them into what Gilles Deleuze called "dividuals" ("Postscript on the Societies of Control" 5). If the practice of criminal profiling is the analysis of aggregates of traits and the assessment of the likelihood of criminality, the criminal profile is not a portrait of a person, rather, it is a set of data, an assemblage of probabilities, that allows for computation; the 'dividualizing' logic of computation cuts through the logic of persons and

[71] Between the 1974-1975 lecture series *Abnormal* and the 1978 essay "About the Concept of the 'Dangerous Individual' in 19th-Century Legal Psychiatry," Foucault gave another lecture series, entitled *Society Must Be Defended*, in 1975-1976, which constitutes his turn towards the study of biopolitics and the kinds of computer-based and biology-oriented mechanisms that characterize what Gilles Deleuze called 'societies of control'. I thus read his interest in the topic of expert psychiatric discourse and criminal psychiatry as part of the phase in which he focuses primarily on biopower and biopolitics, and the kinds of data-based, statistical sciences involved in them, rather than the phase in which he is primarily concerned with disciplinary power and the fields of science and methodologies involved in that. See also Foucault, *Security, Territory, Population*, 4, where he discusses the question "What is the average rate of criminality for this type?" as one that warrants statistical analysis, that no longer pertains to the regime of discipline but is part of the regime of the "mechanisms of security," the regime he also calls "biopower" or "governmentality" and which Deleuze calls 'societies of control.'

does not allow for imagination or representation, or, indeed, for dramatization.[72] Despite the fact that a singular profile can reflect an individual, in that it presents aspects of their life story or personality, the risk assessment to which it leads virtualizes the individual in that it produces a chance factor that allows for further computation.[73] Following the discussion above, this computational logic poses a challenge to the logic of dramatic theatre. When an individual is approached through a dividualizing technology, this may cause a sense of alienation that compares to that faced by the expert whose perspective of an object is always fragmented by the fact that it presents only a partial position in an ongoing debate. The fragmented perspective of the expert criminal psychiatrist, we may say, produces a fragmented object in turn. In a trial determined by experts, both the subject and object of perception are multiplied in such a way that the mode of perception of the legal theatre is fundamentally disturbed.

4. The desire for re-dramatization: Theatricality in two artistic responses to the De Berk trial

The responses I mentioned in the first part of this chapter that sought to 'frame' De Berk *negatively*, as 'Nurse Death' or as a witch were dominant mostly in the reception of the early stages of the trial, although, as I pointed out above, some of it was to remain even after the 2010 judicial decision to acquit De Berk. After that decision, and earlier, when questions had already been raised publicly about the prosecution's case and the judgments, public responses also sought to redeem De Berk, to instead portray her as a victim. These redemptive narratives were particularly strong in the artworks that the De Berk trial led to, Hans van Hechten's 2008 play, *Lucy*, *een monsterproces* ('Lucy, A Monster Trial'), which was re-staged, in altered form, in 2018, and Paula van der Oest's 2014 film, *Lucia de B.*. In this next section, I discuss these three artworks to ask: if the case posed such challenges to the dramatic form of the trial, how do other 'theatres', beside the legal one, employ the mode of drama to counter the hysteria that the De Berk trial led to? What mechanisms do these artworks use to deal with the medial forms and ensuing uncertainties that plagued the trial?

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[72] Galloway also emphasizes this difference when he writes that the computer's "objects" are "never humans" or "faces or bodies," as they are in paintings, photography or cinema, which, according to Galloway, "fixate upon the embodied human form" (12). "Profiles," he states, "not personas, drive the computer," the "projected ego's" of the internet's "'second' lives" in spite (12). If persons are imaginary (of the nature of images), profiles are computational.

[73] See Chamayou for a consideration of the profile as a "dividual-individual," a hybrid of the computational mode of mediation and the mode of images and representation.

Both Van Hechten's play and Van der Oest's film about the De Berk trial do not deal with the nature of computational media, numbers, or with the phenomenon of expert discourse and its product, in any direct, explicit way. But, I propose, in dealing with the trial, both can be read as responding implicitly to these issues, as presenting ways of dealing with their reality, even if unconsciously. In responding to the De Berk trial, both the film and the play take recourse to the mode of dramatic theatre in Hans-Thies Lehmann's sense of the form of theatre that aims to constitute a coherent fictional universe through the speech and acts of recognizable characters. Both the film and the play produce this fictional universe through what can, in Žižekian terms, be deemed a 'conspiracy theory,' in that both present a group of characters – elderly and established jurists and doctors – that have seemingly collaborated to frame De Berk as a perpetrator. Each of the works, notably, stages the narrative in terms of class, representing the conspiring characters as having been motivated by a disdain for De Berk's social status and presenting thereby a fabula ordered by a somewhat familiar, and therefore representable, tension.

Both works also stage a young, ambitious protagonist – a psychologist in the play, an aspiring prosecutor in the film – who ultimately rebel against that establishment, that class, and the prejudices they hold against De Berk, with a strong conviction of De Berk's innocence. Both characters play the hero, then, in an attempt to struggle for a more just world; both present the kind of character with whom a spectator would like to identify. Both characters present reasoned accounts and convincing portraits of the network of conspirators involved in getting their representations of Lucia de Berk convicted. Both capably argue for her acquittal, albeit with different degrees of success. Both protagonists thus act purposively and reasonably in response to the De Berk trial, reinstalling, thereby, some sense of order in the universe disturbed by it: the 'bad' network of conspirators is unmasked, in the play and the film, and by the end, the spectator can feel comforted by the idea that there is some force of 'good' that at least attempts to counter it. For Lehmann, the teleology of purposive and reasonable action, and the order that ensue from it, are characteristic of dramatic theatre (see, especially, *Postdramatic Theatre* 164). This raises the question if the conspiracy theories to which contemporary reality symptomatically gives rise, according to Žižek, as it does in the play and the film, and the image they present of a world in which good and bad can be distinguished, can be understood as the product of a desire for drama, or at least of a desire for the re-dramatization of a reality that has become post-dramatic. In this section, I discuss the artworks in chronological order.

Hans van Hechten's 2008 play about the De Berk trial, *Lucy, een monsterproces*, ('Lucy, A Monster Trial') was written in 2007-2008 and produced for the first time by an Amsterdam-based theatre company in 2008, and performed in their theatre, 'De Engelenbak.' It appeared after the appeals trials had confirmed the verdict on De Berk's guilt and before the trial was reopened in the review procedure that was to lead to her acquittal. The play is divided into three separate, unnamed parts.[74] Suggestions for how to stage them are described in the introductory notes to the script. In the first part, a young psychologist named David Hartman struggles with the case that has been assigned to him, that of a nurse in her early forties, named Lucy, who has been accused of murdering patients. Scenes in which David interviews Lucy are interspersed with scenes that present retroversions that construct Lucy as a character much in the way that Lucia de Berk was presented during the De Berk trial, in that references are made, in short scenes not placed in chronological order, to her past as a prostitute, to her work in the children's ward, to her having failed to return to the library a selection of crime and mystery novels about serial killers, to the probability calculation that was used as evidence during the trial, to Lucy's decision to become a nurse, to her taking care of her grandfather, to her reading tarot cards for an elderly patient in secret, to a police interview of her boyfriend, to her being arrested, and to her colleagues discussing how they find her suspicious.

The main fabula, however, consists of David's attempts to understand his case, his 'patient,' Lucy, and find out the truth about her – whether she is guilty or innocent – through a series of interviews and confrontations that take place in her prison cell. As part of this process, the play also presents scenes in which David reflects on the case with his supervisor, an elderly psychiatrist called Judith Linschoten. Linschoten pressures David to make some haste in the matter, as she wants the report on the case to be finished before her ensuing retirement, which she hopes, as she tells him, will be a "proper," in the sense of "decent," "neat," goodbye (4), as she looks back on an otherwise successful career in which she imagines David as her successor. As he becomes increasingly convinced of Lucy's innocence, however, David presents a threat to such a neat ending for Linschoten, especially when, towards the end of the first part, David claims that the "patient" in his case is "not [Lucy]…, but the court," and that the question is not to establish Lucy's "accountability," but that of the court, and that he intends to make this clear when he makes his appearance in the trial (33). The question of Lucy's guilt or innocence, according to David, remains debatable: she could

[74] The script was sent to me by the author as a Microsoft Word file in an email exchange; it has not been published.

be a murderer, and she could not be; he cannot decide (27). What he does know, however, is that despite this undecidability, Lucy's colleagues, the doctors, the specialists, the expert witnesses, the judges and jurists involved in the case, were nevertheless quick to decide. This makes him suspicious: he feels that Lucy was disadvantaged because of people's perceptions of her, because of their preconceptions about different aspects of her life, such as her traumatic youth and her work as a prostitute (28).

Despite the fact that the report that David has been assigned to make in the first part of the play constitutes one of the expert opinions that is to be used at trial, and that reference is made to the probabilistic evidence that also featured therein, and to aspects of De Berk's – or 'Lucy's' – perpetrator profile, the dialogues mainly have the effect of constructing the different characters involved as persons, as human beings, individuals with proper names, with narratable pasts and futures, and who are capable of acting intentionally. Lehmann typifies dramatic theatre as a theatre that relies heavily on characters, which are cohesive, definable, recognizable, and intentional (*Postdramatic Theatre* 10, 31, 48, 54, 63, 80).[75] Characters make up a central and defining part of the "fictive cosmos" represented in dramatic theatre, of the "illusion" that is to be followed and completed through the "imagination and empathy" of the spectator (Lehmann, *Postdramatic Theatre* 22). Postdramatic theatre, by contrast, is characterized by a general lack of "cohesive characters" (Lehmann, *Postdramatic Theatre* 10). If there are characters in postdramatic theatre, they tend to be problematic to define or lacking in intentionality, reflecting a change in perspective on the nature of human subjectivity (Lehmann, *Postdramatic Theatre* 18). The play's strong characterizations, either of the young psychologist, his senior supervisor, his patient, the different lawyers, experts, or witnesses involved in the case, thus appear to produce such a dramatic illusion, an image of a coherent world.

The playwright envisions this part as a "quick-paced succession of different scenes" with "little décor" and only the strictly "necessary props" (i). We may deduct that the emphasis, in these scenes, is on dialogue, on the text that is supposed to conjure up the 'world' of the play and its characters. Nevertheless, the playwright imagines the part as "cinematic," the visual nature of which supplements the verbal focus of the text with an emphasis on portraiture, faces, perhaps even lines of sight. Indeed, the first part of the play

[75] On the dramatic nature of character, also see Fuchs, the title of whose work – *The Death of Character* – is telling of her object of study: the shift away from the focus on character as the "motor or agency of dramatic structure" in theatre produced after the 1890s (22). In her introduction to the English translation of Lehmann's *Postdramatic Theatre*, Karen Jürs-Munby compares Fuchs' work to Lehmann's, arguing that both are involved in the project of studying the breakdown of dramatic conventions in contemporary theatre practice (1).

appears to be defined by a relationship of vision characteristic of narrative texts (be they stories, films, poems, or plays) that, in narratological terms, is called "focalization," and which theatre scholar Maaike Bleeker defines, for theatre, as the mediation of the relationship between the spectators of the work and what is seen through the construction of a "subject position" that elicits empathetic identification (33). In the case of *Lucy, een monsterproces*, David occupies this subject position; on the basis of the text it appears that the spectator of the play (or the reader of the script) is invited to observe Lucy through his increasingly sympathetic eyes, and, thereby, to identify with his role in the play's fabula.[76] Bleeker points out, with reference to Hans-Thies Lehmann's work, that such use of perspective in theatre is characteristic of dramatic theatre. In the first part of *Lucy, een monsterproces*, both dialogue and perspective serve to produce the coherence characteristic of a dramatic universe and the understanding of subjectivity that accompanies such a universe.

The second part of the play dramatizes a trial that is the product of David's fantasy, in which not Lucy, but the doctors and jurists who handled the first instance of her trial stand accused. This part is envisioned to be modeled on the setting of a Dutch courtroom, but the resemblance does not have to be "too exact," the playwright indicates in his introductory notes, as the scene remains "the protagonist's fantasy" (i). If the reader or spectator of the play has been convinced, in the first part, of Lucy's innocence, through her identification with David, the young psychologist, the second part of the play convinces them that Lucy's accusation has been the consequence of a kind of plot against Lucy. The scene represents a trial-like procedure in which, much like in the real-world trials, the individual cases of which Lucy is accused are discussed consecutively and the evidence that was presented during the first and second trials is evaluated, or rather, put into question, by David. Thus outstepping his role as an expert only in the field of psychology, David presents the toxicological evidence in the trial as having been debatable, in line with my presentation of this evidence as a debate, above, as well as the statistical evidence and the evidence on Lucy's profile; he emphasizes how all of them can still be shown to be subject to doubt, to have been "conjectural," to have consisted of "contradictory statements" (52). The court then turns to Linschoten for her testimony regarding Lucy, at which point the trial seems no longer to fulfill David's wishes, to slip away from the control of his fantasy, as Linschoten presents her account of Lucy's pathologies and proposes that it is quite possible that she committed the murders; an account

[76] See Bal (especially 141) for a discussion of the narrator's manipulation of empathetic identification through focalization in narrative texts.

that resembles the ones given by the psychiatrist and psychologist during the real-world De Berk trial (51). In his fantasized trial, David, acting on reasoned grounds and purposively, sets out to have Lucy acquitted, then, but his attempt fails.

The third and conclusive part stages what remains after David's failed attempt to overturn Lucy's case. It is envisioned as a "Greek drama" (i); the atmosphere is no longer "realistic," but conveys "alienation," as is indicated in the dramaturgical notes that precede the part (55). There is an emphasis on music and song; all of the characters from the first part of the play are to reappear on stage in the form of "a chorus from a Greek drama" (55). The part starts out with Lucy, who had been sitting with her back turned towards the audience, facing the court, during the play's second part, turning to David, addressing first him, and then also the others, with a monologue that expresses her loss of hope in light of the outcome of the trial (55). Although Lucy's disappointment in justice seems conclusive, the monologue is followed by a few short scenes in which different perspectives on Lucy and on the trial are presented in quick succession: a police officer testifies to his fear of Lucy; Lucy's grandmother, boyfriend, and former patient present her as a victim of the judicial system; the jurists emphasize the reasoned grounds of their judgment; two nurses who acted as witnesses during the second part of the play express their sympathies for the families of Lucy's supposed victims; Linschoten complains that the case makes a troubled end to her career; and David, who has the last word, emphasizes his conviction of Lucy's innocence, after which the script instructs for the lights to dim, leaving only Lucy visible on stage, alone in her prison cell (55-59). If the first and second parts of the play seemed conclusive on Lucy's innocence, or at least on the suspicious motivations and flawed evidence for her guilty sentence, the final part confuses the matter. The part has no main focalizer. Despite having the last word, David no longer seems to guide the reader's and spectator's perspective on the matter. The audience is left to decide with whom to identify, and the partial perspectives do not make up a whole that allows for a sense of resolution at the end of the play.

The play's fragmented ending reflects the incompatible universes, to speak with Žižek, the De Berk trial left its audience with, the hysterical nature of the reality produced by it, despite the otherwise conclusive verdict on De Berk's guilt. This reality is reflected not only in the content of the play, the diegesis, but also in the way in which the last part of the play was intended to be staged, namely in the form of a "Greek drama," with an emphasis on music, as the dramaturgical notes indicate, and with lyrical parts performed in chorus-fashion; forms that distinguish the play's final part from the dramatic tendencies of its first and second parts.

In his reflections on theatre, Hans-Thies Lehmann has not only discussed the kind of theatre that followed upon the dramatic tradition, he has also attended to the kind of theatre that came before it, which he calls "predramatic theatre" (*Tragedy and Dramatic Theatre* 10), and which resembles postdramatic theatre in some of its formal emphases. Indeed, predramatic theatre, which included the tradition of Greek tragedy, for Lehmann, emphasized performance rather than drama (*Tragedy and Dramatic Theatre* 2). Especially the element of the chorus, with the lyrical, sung, nature of its utterances, and the dance-form of its stage appearance made Greek tragedy a theatre that was decisively predramatic, emphasizing the corporeality of the theatre as a space and the physical presence of the audience in that space (21-23). Lehmann indicates as one of postdrama's characteristics a tendency to return to such lyricism, to the device of the chorus, to the gestural focus of dance (*Postdramatic Theatre* 91 and 129). I thus read the references to the form of Greek drama and to the element of the chorus in *Lucy, een monsterproces*'s final part, after the failed attempt to redeem the trial and, consequently, the failed attempt to redeem Lucy as a person, a human being, as a sign of the postdramatic reality of the De Berk trial, and the way in which the nature of that reality fundamentally resists dramatization.

Paula van der Oest's 2014 film about the trial, *Lucia de B.*, resembles the play in that it also presents a young and ambitious protagonist who becomes convinced of De Berk's innocence, or, rather, of the idea that De Berk fell victim to a network of conspirators who plotted against her, if only, ultimately, for the sake of saving their own skins, careers, after having taken on the case and publicly or officially accused De Berk. In the beginning of the film, we meet Judith Jansen, an aspiring prosecutor, who arrives at the office of her supervisor, the senior, experienced prosecutor, Ernestine Johansson, on her first day at her new job as Johansson's assistant. Like Van Hechten's play, Van der Oest's film is not *about* expert discourse or statistical evidence, but these elements are present in the film from the very start. Judith, namely, has just defended her dissertation on perpetrator profiling and chain-linking evidence in criminal trials, making her an expert on these conjectural, probabilistic forms of reasoning.

At the start, then, Judith's perspective provides the spectator with a point of identification for the suspicious feeling evoked by different aspects of De Berk's life. When the police first search De Berk's house, early in the film, Judith focalizes the scene. As she scans the room for clues, the camera follows her glance and focuses on different elements that appear suspicious to Judith's expert eye: dirty dishes on the table, the titles of crime and mystery novels about serial murders, one of which has apparently never been returned to the

library, the box with tarot cards, and finally, the diary, which Judith opens up to read several remarkable sentences about 'secrets' and 'compulsions,' sentences that were quoted during the official investigation in the real-world trial and presented as evidence of De Berk's criminal profile. The use of focalization in this scene provides the otherwise dividualizing fragmented nature of profiling, which I discussed above, with the image of coherency: the spectator identifies with Judith's perspective through the point-of-view shots, and reads her worried responses to the clues in her face in the counter shots.[77] The focalized clues make up a portrait, but not only that of De Berk as a likely perpetrator; they also establish a portrait of the prosecutor as a trustworthy analyst of criminality.

Importantly, however, Judith changes her mind about the case. After having eagerly assisted her supervisor in building the case against De Berk, and after the judges present their guilty verdict, Johansson takes Judith to a café to celebrate their success. In a rather suit-heavy crowd, Judith is introduced to Johansson's husband, Paul, as that promising young prosecutor Johansson had told him about. After Judith proudly and humbly accepts the husband's compliments, however, the hospital's director who initiated the case, called Jaap van Hoensbroek in the film, walks over to congratulate Johansson, with whom he appears to be on a first-name basis, calling her Ernestine, congratulating her on the victory and inviting her and her husband, whom he hugs and familiarly calls by the diminutive, 'Paultje,' to his holiday home in Tuscany to celebrate, now that it is all over. The intimacy between the senior prosecutor, her husband, and the hospital director is focalized, again, by Judith, who next glances around the room to see intimate relations between more of the officials who participated in the trial. It appears, from the scene, that the expert toxicologist who testified during the trial is already familiar with Judith's direct colleague, Johansson's other assistant, and they briefly talk over the fact that a doctor who played an important part in providing evidence for the case has been submitted to a clinic with mental problems. The fact alarms Judith, and her suspicion is intensified by the intimate ties that appear to exist between all of these established officials who have been involved in the case, drinking their fancy toast, in their fancy clothes.

Mimicking the cinematic devices used in the scene of the house search, Judith's perspective and the use of focus here focalize clues of a network of conspirators who, her questioning glance suggests, may have plotted against De Berk for their own advantages. If

[77] See Verstraten 87-93 on identification and focalization in relation to editing and what is known as 'suture theory' in the field of film studies.

the scene in De Berk's house established Judith as a trustworthy expert on criminality, the scene in the café begins to establish her as a trustworthy sceptic about the trial. The scene becomes even more significant when it is repeated, later, in the form of a purely visual flashback, dramatically slowed-down this second time, that focusses on her perceptions of the room and the visual clues of the intimate relations between the people present, on the idea that the prosecutors, judges, experts, and other officials involved in the case may have formed a conspiring *network*. From the café-scene onwards, the film relates Judith's investigation into her doubts about the case. She collects evidence that may undermine the prosecutor's case, switches to the side of the defence and their struggle to get Lucia acquitted, and we relish in the victory they finally manage to reach when the judges in the review procedure overturn the case at the very end of the film.

If the fractured reality of probabilistic assessment makes its appearance in the film at the level of content, the formal level compensates for the incoherency that reality produces by means of focalization, by providing the spectator with a coherent perspective. Judith also focalizes the end of the film, after the judges acquit De Berk, when she watches De Berk walk out of the courtroom, and walks past the hospital director, Jaap van Hoensbroek, who tells a representative of the press that despite the outcome of the trial he would not have done anything differently were he presented with the same situation again; a statement the real-world hospital director, Paul Smits, actually made to the press after De Berk's acquittal. The final scene presents Judith walking off among the office buildings, into the distance. Through the formal, cinematic device of focalization, then, the film's ending presents the coherency that the end of Van Hechten's play missed.

Perhaps the film was able to achieve such coherence because it was released in 2014, well after the trial had been overturned in the review procedure, but I propose that the motivations were of a different order. The film's emphasis on the conspiracy of officials divides the world of the trial into 'bad guys' – the prosecutors, judges, expert witnesses, doctors, and hospital director – and 'good guys' – the defence, joined by Judith Jansen – even more neatly than the play did. If the play's final part disturbed the empathetic identification evoked by focalization in the earlier parts, the film allows the spectator to side with the good guys until the end and to take that position in a coherent and ordered world in which justice has finally prevailed. The only lack of resolution to which the film testifies, in some concluding statements that emerge on screen before the onset of the closing titles, lies in its consideration of the fact that the officials involved in getting De Berk convicted were never punished for this, which implies that, according to the film, they should have been or might

still be. Nevertheless, from Judith's and the film's perspective, the case is closed; the suggestion of conspiracy that defines and concludes the narrative presents the ultimate resolution of the De Berk case. Together with the jurists, the public can now, too, lay it all to rest. Yet this resolvability is only fantasmatic, or, to put it in Žižek's terms, it is a 'desperate' way to get some grip on the reality of the trial.

That this appears to be the case becomes clearer when we consider that after the production of Van der Oest's film, there was yet another artistic response to the De Berk trial: a second production of Van Hechten's play, staged by an amateur theatre company in Arnhem in 2018. For this second production, the 2008 version of the play's script was adjusted slightly by the author, based on the suggestions of the Arnhem-based theatre group's director, Pieter van Terheijden. Crucially, this 2018 production added an epilogue that reflects the outcome of the review procedure in which De Berk was acquitted and that replaces the 2008 production's third part, the one that was staged in the form of a "Greek drama," with its presentation of the fragmented perspectives on the case. After the statement of the final verdict, the epilogue, like the film, also presents the interview with the hospital director, called Steven in the play, stating that despite the outcome he would not have done anything differently and has not felt sorry for a single moment about the decisions he made to kick-start the investigation. Implicitly, then, and like the film, the second production of the play accuses the hospital director and the class of characters – the psychiatrist and the jurists – he represents, as having gotten away with the situation without having been punished for it, without even having to feel remorse about it. Replacing the final part of the play's first production with such a conclusive statement, then, may indicate that whereas the 2008 production ended in an open, fractured way, 2018 sees the world of the De Berk trial finally coherent again.

However, the end of the 2018 production of the play, too, remains somewhat open at a formal level, albeit in a way that differs from the 2008 version. The script presents an addendum with a number of possible variations that can be taken up in performances of the play, notably of the ending, which the playwrights present in the form of a monologue *and* in the form of an interview in which David confronts the hospital director, Steven, with some questions, to which his answer, too, is that he does not feel sorry at all for the choices he made. The monologue makes Steven appear certain of his position and makes the play's spectators into his audience. The confrontation with David reintroduces the element of focalization; David's judgment of the situation colours our perspective of the hospital director's responses to his questions. The playwright makes clear that the decision is up to the company producing the performance. Although the difference seems slight, the fact that there

is a decision to be taken *at all*, that a certain indecisiveness marked the production of the 2018 version of Van Hechten's play, an indecisiveness which the script projects into possible future performances of the play as well, is significant. In our private correspondence about the script, Van Hechten indicated that he was very content with the 2018 version's new ending. However, the question that lingered in my mind after reading the updated version of the script was: which of the two endings? The openness at the level of the script, the fact that the script presents its potential performers with multiple options, suggests that a certain indeterminability still lingers in the De Berk case, after all, and despite the apparent resolution of the case in the real-world trial and in the cinematic and theatrical responses to it.

If the 2014 film 'reviewed,' as it were, the 2008 play, mimicking its narrative but with a different, more conclusive outcome, the 2018 play 'reviewed,' in turn, the film, to, perhaps unintentionally, open some of the film's conclusiveness back up by means of the indecision about the form of the ending. Perhaps the very fact that after Van der Oest's film there was still a desire for another artistic response to deal with the De Berk trial can already be seen as an indication of that same indeterminability, the lack of a public resolution in the case. Despite that they appear to *intend* to bring closure in the matter, I thus take this line of revisionary artworks as a symptom of the fact that something remains uncomfortable about the De Berk case, and perhaps even unclosable. With respect to the De Berk trial, and given the questions that were at play in it and that I have discussed in this chapter, it may be the case that the public will have to continuously be comforted, in artwork after artwork, and told that their world really does make sense after all, that good and bad, guilty and innocent, can ultimately be distinguished in it, in what Žižek would call a 'desperate' attempt to get some grip on an increasingly paranoid reality. The artworks, then, are symptomatic of the fact that the De Berk trial remains traumatic, indicating the fractured, paranoid, and postdramatic reality that disturbed the legal as well as public course of it, and they indicate the unconscious public desire that this reality evokes in the public for a re-dramatization of their world.

4. The Contaminated Blood Affair: Biopower, the Genre of Political Drama, and a Fantastic Ending in Hélène Cixous' Play *The Perjured City*

1. Courtroom drama and the case of a missing act

In the case I discussed in the previous chapter, the computational mode of mediation of the evidence that played a central role in the trial disturbed the process of dramatization at which the trial traditionally aims, because of the conflict between computation – i.e. calculation and numbers – and the medial forms of drama: the verbal and visual. If the focus in the previous chapter was on the medial form(s) of drama, in this chapter I focus on drama as a generic form. If medially drama is concerned with what can be told and what can be seen, as a genre of text, drama is concerned with *acts*. The very word 'drama' derives, etymologically, from the Greek verb δραν, which means 'to do' (*Postdramatic Theatre* 36). Acts are the subject of what is shown on stage and what is spoken about. According to Aristotle's famous poetic formula, Lehmann writes, "tragedy is the imitation of human action" (*Postdramatic Theatre* 36); i.e. poetically, action is seen as the defining object of imitation, of mimesis (*Postdramatic Theatre* 37). Law, too, is concerned with acts, in that – as we have seen from the previous chapter's discussion of Foucault – it is traditionally concerned with the judgment of crimes, breaches of the law, prohibited deeds. In order for a court case to be presentable in court, someone must have *done* something, or someone must have acted 'negatively,' as it were, in that they failed to do something that would otherwise be expected of them, as is the case in 'neglect'. The question I address in this chapter is: what happens to the drama of judgment when a case appears in court in which harm has clearly been produced, but it proves virtually impossible to decide if something was actually 'done' or 'not done' to cause it, i.e. if there was, at all, an act, that led to the suffering involved in the case?

As I discussed at the outset of the previous chapter, media scholar Cornelia Vismann characterized the trial as a process of dramatization (125). With reference to Pierre Legendre's definition of a crime as "the complete dissociation of speech and act" (122), i.e. a crime is to be understood as an act that cannot be represented in the terms of a particular symbolic order, Vismann proposes that the trial seeks to dramatically represent the past act,

verbally and visually, so that it can be re-associated with that order and its subject re-introduced in it. Indeed, the notion of the act or the deed plays a central role in the theatrical understanding of the trial for Vismann, as becomes apparent from her essay:

> If the trial is the 'theater of crime,' then it is here on the courtroom stage that the act is mirrored in language. It is here that it is re-enacted in the theater of justice. In this rather symmetrical constellation of crime and trial, courtroom discourse seems to echo the performative function of words. Thus a past nonverbal deed is made present in language. A mute act outside of court demands its representation in court in order to be communicated, in order to be subject to any kind of transitive activity such as judging. (124)

In providing the stage for the re-enactment of the criminal act, the "past nonverbal deed," the courtroom presents the scene in which such a past act can be "represented," or "made present in language." In order for the "transitive activity" of "judging" to take place there must have been an act or deed that can be communicated, that can be subject to discourse. There would be no trial if there had not been an act that appeared, somehow, to be untranslatable, unrepresentable, in the terms of a given symbolic order.

Vismann thus follows Legendre in her understanding of the curative ("therapeutic") effect trials have on the symbolic order because of the translation that takes place, therein, of the past act into discourse. (125) If, according to Legendre, the crime is the moment a subject falls out of the symbolic order,[78] by means of which that order is broken, the trial, the event in which a crime is verbally re-enacted in court, allows for the reparation of the "wounded institution", as Vismann calls it, following Legendre; i.e. for the re-installation of the broken law. This reparation is performed when the accused is made to speak about their past deed, thus integrating it with their present being. In order to have the intended curative effect, such speech needs to be conducted in the first person singular. Let me re-read a quote already given in the previous chapter, where Vismann writes:

> Confronted with the alleged weapon used in a crime, for example, an accused is supposed to say, 'I took the knife,' rather than 'the knife arrived.' … The law insists

[78] Legendre's use of Lacanian psychoanalytical terms to indicate the unrepresentability of crime differs from other Lacanian psychoanalytic understandings of the trial in which it is not the crime, but rather the violence committed through it that is considered to be unrepresentable and to remain so. See Felman and Horsman for such understandings.

> … on articulating the sentence in the first person. Its jurisdiction depends on this speech act, this assumption of authorship of a deed. It aims at converting *it* into *I* – what the law calls responsibility – so that the legal business of the court can be performed. This conversion, toward which the confrontation with things as a synechdoche of a past deed aims, is the ground of punishment. (130)

Not only must there have been an act or deed that can be represented or "communicated" in court, that deed must also be communicable according to the logic of the grammar of personhood in the first person singular, 'I,' *and* into a statement that includes an *active verb*, like "I took".[79] For law to work effectively, to work towards justice, to cure the "wounded institution", crimes need to be translatable into first person, active statements, i.e. into the verbal logic of *acts* and *actors*. Or, to put it differently, if language is the primary medium of the trial, as I discussed in the previous chapter, the act appears to be its defining object.

Central to Vismann's characterization of the trial is its understanding of the subject as agent, as an autonomously acting individual, and subsequently, the idea of narrativizable deeds. If the previous chapter was concerned with subjectivity as the necessary precondition for judgment, and discussed how the subject is presented by a certain mode of speech that can be disturbed when other media are introduced as evidence in the trial, this chapter emphasizes that that form of speech is about an *act*, about *agency* as a matter of responsibility, as that is what allows judges to make someone answer for their deeds, especially for deeds that constitute breaches of law. It is this logic that allows for the maintenance of a given social order. This chapter is thus not concerned with the representation of deeds in verbal, visual, or other forms, but in the very fact that in order for there to be judgment in a trial, someone must have acted to cause a breach of law; i.e. with the fact that a particular understanding of agency is a precondition for legal procedures to take place at all.

Although they are certainly the main and legitimating effects sought by legal mechanisms, upholding order and correcting breaches of the law are not the only effects trials pursue. Acts that are prohibited by law generally have the effect that they cause harm or suffering, like in the case of murder or theft. As a result of such an act someone experiences a loss of property or an injury to their body or person. Despite the fact that victims traditionally play no role in criminal procedures, the trial arguably functions as a therapeutic scene not

[79] I am not interested here in the subject-constitutive effect of statements; I take Vismann's argument that a statement including an active verb is necessary in the trial's dramatization to imply that the categories of 'act' and 'agent' are preconditions for legal procedures to take place.

only for the "wounded institution" of law, but also to provide some form of 'therapy' for the actual suffering that took place as a result of a crime, i.e. for victims or relatives of victims. The ongoing debate about victims' rights during criminal trials, and about the status of the victim impact statement therein, can be seen as a sign of the public awareness of the need for this therapeutic 'side-effect,' by means of which a verdict not only repairs the legal order, but benefits the victim and/or their relatives as well.[80] If this chapter focuses on acts and actors, then, it also considers those who were the acts' and agents' objects. Here, this chapter asks how the legal drama relates to a second, implicit need for therapy that plays out in trials with regard to victims.

The legal case in this chapter is the trial in what came to be known in France as *l'Affaire du sang contaminé*, the 'Contaminated Blood Affair'.[81] The Affair names the political, economic, and medical climate in which blood products contaminated with HIV were sold to hemophiliacs and used in blood transfusions in France in the 1980s, thereby exposing thousands of patients to the risk of contracting AIDS. Conducted in the early 1990s, the trial saw prosecutors' attempts to accuse several officials, doctors and politicians in charge of the semi-private national blood supply for this exposure, but ultimately it could not be presented as an attributable 'act', as a crime, and the accused were never charged with 'poisoning' or 'manslaughter,' legal definitions that would have done justice, as it were, to the fact that the Affair had had, and was still having, deadly consequences. Some officials were ultimately charged with 'merchandising fraud' and 'non-assistance to persons in danger,' but these fall not in the category of crimes but in that of *misdemeanors* (*délits* in French, instead of *crimes*). Although misdemeanors can be construed to be 'acts' of sorts, and although they are listed in the criminal code, the etymological origins of the term – which derives from the French *demener*, 'to guide, to conduct,' and the late Latin *minari*, 'to drive (a herd of animals) – point towards processes or behavior, a more general, dispersed phenomenon than the singular, dramatic act. Besides, the term indicates a significant symbolic difference, as the juridical status of misdemeanors differs from that of crimes: in many legal systems sentences for misdemeanors are much less severe than for crimes, as in the French legal system. In many systems, misdemeanors and crimes are dealt with by different kinds of benches, often more locally seated,[82] and punishment for misdemeanors is often organized by different, more

[80] See Walklate, and Mawby and Walklate, for overviews and aspects of the discussion in an international context.

[81] See Kramer (1993), Trebilcock (1996), and Steffen (1999) for detailed accounts of the affair. I will refer to the Contaminated Blood Affair as 'the Affair' throughout the rest of the chapter for brevity's sake.

[82] In the Dutch context, for example, they are dealt with by more locally seated judges (so-called 'kantonrechters') rather than ones that operate at the level of the state (the courts).

local prison systems.[83] This emphasis on the local raises the question whether misdemeanors are to be considered a breach of the legal order that constitutes the state or rather as something that impacts a local community. As the contamination played out nationally, in the case of the Affair it was arguably the first rather than the second that was at stake in what had happened. As the state did organize compensation schemes for victims, there must have been recognition, at this level, for the damages done to individuals. Yet, somehow, that recognition could or would not be 'performed' publicly, in a criminal trial that could establish some causal link between those damages, the suffering of those individuals, and the agency of certain other individuals, who could then be charged with acts that would translate the deaths and illnesses the Affair had brought on into breaches of the legal order. All in all, the trial was experienced to have been a failure, even though it was legally, i.e. procedurally and formally, sound. In this chapter, I investigate how this experience of failure was a consequence of the question of agency, of 'acting,' that played out in the Affair and in the trial.

With respect to this, it is of interest that the trial led to the production of a work of theatre, a play that responded to the same situation and suffering as the trial did, that reflected on the trial as a legal procedure as well, and that showed concern for the fact that the victims in the situation lacked 'therapy'. Entitled *La Ville parjure, ou le réveil des Erinyes* (1994), translated as "The Perjured City: Or, the Reawakening of the Furies",[84] the play was written by French feminist philosopher Hélène Cixous in 1992-1993. It was produced by the *Theatre du Soleil* under direction of Arianne Mnouchkine. At its start, a character called 'The Mother' leaves a place called 'The City' for a cemetery that lies outside its walls, called 'The City of the Dead,' to be close to the graves of her two sons. As will become clear throughout the play's developments, the sons were hemophiliac patients who died from AIDS in the context of the Affair. One example of how the play responds to the trial is by dramatizing a re-trial and doing so within a metadramatic frame. I thus take the play as an attempt at dramatizing the trial that was, in Vismann's theatrical definition of the trial, already a dramatization of the Affair. The metadramatic layer that is added to this chain of dramatizations, helps me to frame the problematic reception of the trial as caused by the generic logic of drama and its emphasis on acts and actors. When that theatrical re-trial also fails, however, the central question with which the play grapples, in my reading of it, becomes that of how to care for the Affair's victims. The questions I raise in my discussion of the play are thus: what can drama – in the

[83] In the US context, for example, sentences for misdemeanors are served in county jail rather than state or federal prison.
[84] Published in *Selected Plays of Hélène Cixous* (2004).

legal guise of 'courtroom drama' and in the artistic guise of a theatrical work – *do*, generically, in response to a case that seems to defy the logic of 'acting' on which fundamental concepts of responsibility are based? Secondly, if no acts can be legally established, what happens to those to whom something was done in such a way that it left them severely wounded *and* missing the therapeutic relief that a legal case may lead to. The question will be what this particular work of drama is able to do, as a singular performance that raises the question of 'care' in engaging with its subject matter.

2. *The Contaminated Blood Affair and the limits of law in relation to Michel Foucault's concept of governmentality*

The article Jane Kramer wrote about the Affair for her 'Letter from Europe' rubric in *The New Yorker* in 1993, entitled 'Bad Blood', bears a telling teaser:

> *The plan was for the French to help hemophiliacs lead healthier lives and to dominate Europe's blood-products market. Instead, three hundred people are dead of AIDS, and a thousand more are dying. Four doctors have been convicted, but the question of where ultimate guilt lies has left France divided.* (74)

Kramer's article highlights the tension that arose out of the socialist government's policy to aim for national self-sufficiency in blood products and its desire to dominate the European markets in this field, when the organizations managing the production of these products were confronted with the appearance of HIV/AIDS in the early 1980s (Kramer 76 and 83, and Steffen 98). HIV/AIDS has had a large impact on societies since it acquired pandemic proportions in the early 1980s. Acquired immune deficiency syndrome (AIDS) is a spectrum of conditions that occur as a consequence of infection with the human immunodeficiency virus (HIV). HIV, a virus that interferes with the immune system such that it increases the risk of other infections that cause illnesses, is transmitted through bodily fluids, most notably through blood, via, for example, unprotected sex, contaminated blood transfusions, the sharing of hypodermic needles, and from mother to child in pregnancy, childbirth, or breastfeeding. There is no cure for the diseases to which infection can lead, only treatment.

It appears that the risks and consequences of contracting AIDS and of contamination through blood transfusion only became clearer gradually in the 1980s, when the virus was first beginning to spread. When American blood product companies announced that heat-treating blood products significantly lowered the risk of HIV infection, France, not having the

technical capacity to heat-treat blood products themselves, decided not to import American products to replace their own, untreated blood with. The *Centre National de Transfusion Sanguine* (CNTS), the National Centre for Blood Transfusions, was the organization responsible for the production and distribution of about eighty percent of French blood products, holding a monopoly on forty percent of them. It decided not to call back untreated products that had already been sold and kept selling the stock of untreated products they had already produced (Kramer 85 and 74). As they assessed the risk of contamination to be low, they decided not to bear the vast cost of such an operation and waste what they thought was still a 'good enough' product.[85]

In addition to that, the government decided not to grant a patent to an HIV antibody test kit produced by the American corporation, Abbott, so as to facilitate the development of a test by the French firm Diagnostics-Pasteur (Steffen 106), which could then dominate the European market for blood test kits. This test was finally introduced in August 1985, but for the time in between Abbott's application for a license for their test in January of that year (the granting of which would have made testing available), and the completion of the development of the Diagnostics-Pasteur test, the French population was deprived of the possibility to test for seropositivity. The officials balanced the costs of the risk of contamination against the costs of losing the chance to dominate the European market for blood test kits. The consequence of this calculation was that patients using blood products and transfusions, especially hemophiliac patients, whose health depended on these means, were exposed to the risk of contracting HIV/AIDS and dying from it – as many did.

Aspects of what Michel Foucault conceptualized as "biopower" and "governmentality" in a series of lectures in the late 1970s allow us to think through the power at play in this situation. In those lectures, Foucault describes a shift in state power that takes place in the eighteenth and nineteenth century from "classical" sovereignty to what he first called "biopower" in his lecture series published as *Society Must Be Defended* (1976), and which he later specified as "governmentality" in another lecture series, published as *Security, Territory, Population* (1978). Traditionally, sovereignty is characterized as the right of life and death, Foucault writes, which in practice comes down to "the right to kill" (*Society Must Be Defended* 240). If sovereign power is the right to "take life" or to "let live", Foucault writes, the eighteenth and nineteenth century sees the onset of a complementary form of

[85] Risk assessment and probability calculation thus also play their parts in the case and trial that are subject to this chapter. See Chapter Three for a discussion of the relation between computational media and the media involved in the trial as a form of legal theatre.

power that consists in "the power to 'make' live and 'let' die" *(Society Must Be Defended* 241). It takes 'life' as its object, intervening at the level of biological processes such as birth, death, health and illness. This form of power is not interested in individuals and their rights and properties, like juridical power, and not in "man-as-body," like the disciplinary power Foucault also theorized, but in "man-as-living-being" or "man-as-species," i.e. in "populations" (*Society Must Be Defended* 242). This focus on the population, which Foucault calls "an absolutely new political personage" that makes its entrance in the eighteenth century, constitutes a shift from "the juridical-political notion of subject" to what Foucault calls "a sort of technical-political object of management and government" (*Security, Territory, Population* 70).

The shift in emphasis concerning matters of state is one from a legal to an economic logic. "The essential issue of government," Foucault writes, is "the introduction of economy into political practice" (*Security, Territory, Population* 95). Whereas juridico-political power is defined as the rule over a given territory and is constituted by and limited to its borders and exercised on the basis of a code, governmentality is interested only in part in 'territory' and 'codes', in the binary logic of borders (one is inside or outside) and rules (one lives in accordance with them or breaks them). It is much more concerned with what Foucault describes as "men in their relationships with things like accidents, misfortunes, famine, epidemics, and death" (*Security, Territory, Population* 96). That is, events that cannot be defined in terms of legality and illegality, and that cannot be avoided completely, but that would be economically advantageous to minimize or manage. The regime of governmentality focuses on "endemics", phenomena that were structural in a population rather than incidental, and that "sapped the population's strength, shortened the working week, wasted energy, and cost money, both because they led to a fall in production and because treating them was expensive" (*Society Must Be Defended* 244). In other words, government is invested in the health of a population for the sake of its productivity; it is defined by an economic rationale. The "end of government," Foucault writes, is "to improve the condition of the population, to increase its wealth, its longevity, and its health", which is obtained for example through campaigns to stimulate the birth rate, and by managing, in general, the means of subsistence for a population (*Security, Territory, Population* 105). Coupled with the figure of the state, the central aim is national welfare.

In the context of the Contaminated Blood Affair, it became clear that hemophilia, a genetic disorder that impairs the body's ability to make blood clots due to a lack of specific clotting factors, thus increasing the chance of hemorrhaging, was a condition subject to the

kind of regime Foucault describes with the term 'government,' but in a way that shows its ugly face, as it were. As a disease, hemophilia results in patients bleeding for a longer time after injury and an increased likelihood of internal bleeding, which potentially leads to permanent physical damage, or can be fatal. There is no cure for hemophilia; the condition begs for treatment after the occurrence of an incident – a cut or a bruise, for example – or for continuous treatment with products that replace the missing blood clotting factors prophylactically. In France, at the time, products in the latter category were called "comfort products," meant to enable hemophiliacs to live more or less "normal lives" (Kramer 77). These products, Kramer writes, were part of "a program" that was about "marketing" as much as it was "medical"; sales were advertised with pictures of hemophiliac kids on sports holidays (77). Despite the more seemingly social cover of "Brussels" and "a European Community directive for 'self-sufficiency' in blood," the French government aimed for the CNTS's products, "France's comfort products," Kramer writes, to "corner the [European] markets" (83). The comfort products were "expensive," and the hemophiliacs thus "big business" (Kramer 85). Caring for hemophiliacs was an issue of national economy.

Indeed, the situation of the HIV outbreak in the early 1980s was a question of population-management as well, in which costs were continuously weighed against potential profits, financial or otherwise.[86] General decisions on government responses to the matter depended on the idea that HIV victims – in France mainly immigrants and homosexuals – were 'unwanted' or 'un(re)productive' citizens that were considered not to be of much economic worth, even costly, to the nation (Kramer 79).[87] Decisions concerning the potential infection of hemophiliacs were influenced by the desire to research and develop better "protocols" (Kramer 77), i.e. programs for treatment of hemophilia, and, after hemophiliacs appeared to be seropositive, for the treatment of HIV/AIDS. The potential health risks of the hemophiliacs involved appear to have been taken as collateral damage in this process. The CNTS's senior scientist, Jean-Pierre Allain, one of the four officials who were eventually indicted for their parts in the Affair, had a pool of hemophiliac patients to run his personal clinical tests on, and researchers who later studied his publications discovered that he tried to prove, through tests on his own patient group, that the retrovirus could function like a vaccine

[86] Kramer mentions AIDS activists' complaints that the budget for indemnifying infected hemophiliacs were twice as large as the budgets for prevention were, and many times the budget for research (93)

[87] The body of literature on the exclusionary mechanism of citizenship is vast. For more general accounts of and debates on citizenship as a mechanism, see Anderson, and Nicholson and Seidman, amongst others. See Berlant, *The Queen of America* 19, for a specific consideration of immigrants and homosexuals as 'unwanted' people, people only granted partial participation in the institution of citizenship.

and stimulate the production of antibodies to produce immunity, which turned out not to be the case (Kramer 77). "There were no laboratory animals ready for AIDS research when Allain began his protocols," Kramer writes (89); it appears as though Allain's hemophiliac patients were reduced to them, and their lives considered less valuable than the research results that were supposed to be obtainable at the cost of the risk taken with the patients. The whole Affair is characterized by implicit, at times even explicit, calculations of the worth of human lives vis-à-vis potential profits for the state.

Such comparative cost analysis is the defining mechanism for governmentality, according to Foucault (*Security, Territory, Population* 5). From his earliest writings on biopower and governmentality onward, Foucault considers it an ambiguous form of power. On the one hand, and after his initial explanation of biopower in *Society Must Be Defended*, Foucault raises a series of questions concerning the way in which "the power to kill" and "the function of murder" take form in this regime, given that the overall objective is to "make live" and "improve life" (254). Racism, Foucault argues, becomes the mechanism through which a certain sovereign-esque killing power is operationalized in the regime of biopower as a way to improve on life, through a weighing of the value of lives for the state. The general idea was to eliminate "degenerates" and to have supposedly superior, healthier species proliferate. This constituted a biological justification for the power to kill specific to biopower, which, Foucault stresses, did not only take the form of "murder," but also of "indirect murder," of "exposing someone to death, increasing the risk of death for some people," or even "political death" (255-256).[88] These considerations lead Foucault to discuss "the example of Nazism," in which biopower coupled with the 'old' logic of sovereignty and became a state racism that culminated in the death camps (259-260).

On the other hand, however, Foucault stresses that biopower, intent as it is on 'improving life' and 'making live,' also has a "beneficent" side (*Security, Territory, Population* 126), namely when he traces the outlines of one of governmentality's "models": the Christian pastorate. The metaphor that defines this model is that of a shepherd (Latin *pastor*, French *pasteur*) tending to its flock.[89] "Pastoral power is a power of care," Foucault writes, as its "essential objective" is the "salvation (*salut*) of the flock" (*Security, Territory, Population* 127). But in aiming for the salvation of all, a shepherd is faced with a fundamental

[88] Much has been written on this aspect of biopower under the title of "necropolitics." See Mbembe, "Necropolitics," which is listed as the first article to have explored the term in-depth. See also Mbembe, *Necropolitics*, Butler, *Precarious Life*, and Puar. Note that Mbembe, Puar and Butler do not separate sovereign power and biopower as strictly as Foucault does. Berlant also points this out in her discussion of biopower in *Cruel Optimism* (96-97).

[89] Kramer, too, presents the CNTS as an institution that was believed to be one of France's "most benevolent" (74).

problem that, according to Foucault is not only the problem of Christian pastorship, but also of the "modern techniques of power deployed in the technologies of population" he has been discussing (128). The "paradox of the shepherd" is that "the shepherd must keep his eye on all and on each, *omnes et singulatim*" (128). The problem is one of sacrifice: "since he must save each of the sheep, will he not find himself in a situation in which he has to neglect the whole of the flock in order to save a single sheep?" The "paradox of the shepherd," Foucault writes, is that of the question of "the sacrifice of one for all, and the sacrifice of all for one" (129), i.e. the economic problem of comparing costs, making up a balance, and doing so in the name of 'care.'

Given the outcome of the Affair, the thousands of deaths and the suffering it caused, it seems horrid to even suggest that a 'beneficence' lay at its root. And yet the officials who were accused in the trial for the Affair operated with the intention of ensuring France with a good position in the international market for blood products and blood tests, taking to heart the national economic interests, the general economic well-being of the French (*omnes*), and intending still to help hemophiliacs (*singulatim*), too, as Kramer indicates in the teaser for her 'Letter from Europe' on the Affair. No one *intended* for hemophiliacs to die; deaths occurred within the context of a program that was designed, in fact, to "help" them. A risk was taken, a so-called "statistical risk" (Kramer 77 and 85), and it turned out to have been misjudged. The hemophiliacs who became infected with AIDS were 'collateral damage' rather than lives actively targeted; their sufferings were side effects of the management of (a particular branch of) the national economy. The hemophiliacs' lives were not 'taken' in the sense of the classical sovereign "right of life and death," but they were 'let' and 'left' to die (*Society Must Be Defended* 240-241).

In 1988-89, when the number of recorded cases of AIDS related to treatment with contaminated blood products and transfusions had shot up, it had become apparent that the HIV/AIDS contamination hit a much larger percentage of the hemophiliacs than officials had calculated for (Steffen 110). In the years that followed, compensation funds were set up for hemophiliacs suffering from "full-blown" AIDS, first, and later when it became clear that the government had been directly involved in delaying the availability of a test, a compensation fund was set up for all victims, not just hemophiliacs, and for all those who had become infected with HIV, not just AIDS, as a consequence of blood transfusion. But the condition for obtaining such compensation was that the recipients would not start civil or criminal procedures (Steffen 113; Trebilcock 1453). In civil cases that were nevertheless brought before the courts, the state attempted to settle and thereby silence the matters. But a criminal

case that was filed in the courts in March 1988 brought matters before a more general and wider public.

The accused in the case were Michel Garetta, who had been director of the CNTS, Jean-Pierre Allain, the CNTS's senior scientist and deputy director, Robbert Netter, the director of the National Laboratory of Health at the time, and Jacques Roux, the Director General of Health in the Ministry of Health. In the end, and despite different lawyers' attempts to obtain serious indictments in the matter, the public prosecutor decided not to charge the suspects with crimes like 'poisoning' or 'manslaughter,' because it proved almost impossible to meet the conditions set by the criminal code's provisions on them (Kramer 80). Instead, Garetta and Allain were indicted with 'merchandising fraud' (deception intended to result in financial gain) and Netter and Roux with 'non-assistance to persons in danger', so as to ensure guilty verdicts and punishment, for the sake of "practical justice" (Steffen 118; Kramer 75-76, 80). In October 1992, when the judgment was handed down, Garetta received a prison sentence of four years and a fine; Allain was sentenced to four years of prison, two of which were suspended (Steffen 119; Kramer 82). Roux received a suspended sentence of four years in prison and Netter was acquitted (Steffen 119).

Although their capacity as government officials Netter and Roux implicated the State in the affair, it had proven legally impossible to hold other politicians and bureaucrats accountable. A special parliamentary procedure was begun to charge certain politicians with 'complicity in poisoning' (because of the immunity granted to all French politicians, they cannot be held accountable in the criminal courts), but a conservative public prosecutor, opposed to what he called the 'criminalization of public life,' blocked it, claiming there were no grounds and that it was up to the electorate to deal with politicians (Steffen 120). Since most of the politicians involved in the affair were already out of office after elections were won by right-wing parties, they could not be made to resign from their positions anymore as a form of 'punishment' (Kramer 93).

All of this made it seemingly impossible to deal publicly, by legal or pseudo-legal means, with the fact that so many lives had been lost in the Affair, and that HIV and AIDS had caused so much suffering for those who had contracted the diseases and for their families and loved ones. The feeling that there had been a crime which had not been named as such remained and haunted the trial's public reception: 'fraud' just didn't cover the fact that people had died and were dying, and yet no one, politicians, institute managers, or doctors, had acted consciously with the intention to 'poison' or 'manslaughter' anyone. Even the examining judge agreed that the trial did not 'solve' the affair. She is quoted to have said that "she could

have indicted a hundred people, or no one at all" (Kramer 82), it would not have made a difference. But at the same time, the trial had been *juridically* 'successful,' as it were: the case had been procedurally correct, the judge had come to a verdict in accordance with the law, and the convicted were punished in accordance with her sentence. To put it in Vismann's terms, the law seemed to have produced its 'curative' effect, in so far that it re-established its order, but it could only do so by leaving open a gaping therapeutic question that both touched on and lay just beyond the domain of law, in that it was felt that justice had not been done to those who had died or were dying.

The crucial problem, I propose, is that the law's failing to account for the loss of lives as crimes in the Affair was a sign of its being 'in order'. Failure in this case was not an exception. The case suggests, rather, that it was a sign of criminal law's structural inability to 'grasp' the kind of "environment" or "milieu" in which hemophiliacs were exposed to HIV-contaminated blood products in terms of crime. Yet, in that 'environment' the lives of some were risked, were "let to die," "exposed to death," as Foucault also puts it, or "sacrificed," for the sake of the lives and well-being of others.[90] The Contaminated Blood Affair thus raises the question if it is structurally impossible to translate the logic of governmentality – the logic of 'letting' and 'exposing' – into the logic according to which law attributes responsibility, i.e. the logic of acts and actors, the logic Vismann called "dramatization". In his lectures on governmentality, Foucault already appears to point towards the incommensurability of the two logics, when he suggests that governmentality supplements and modulates the logic of law and juridical power but is also "absolutely," paradigmatically, different from it, since it presents a "caesura," as it involves completely different mechanisms, techniques, and technologies (*Security, Territory, Population* 4 and 42). Yet, Foucault does not much develop his thoughts on the consequences of the absolute differences between regimes of power and the potential tensions these may lead to, or on the way it 'modulates' the logic of law or affects the legal theatre and the therapeutic ritual staged in it. In light of the problems that appeared in the trial for the Affair, I take Foucault's thoughts on the relations between different regimes of power as an invitation to explore further what those tensions may consist in, and subsequently what consequences they bear for the possibility to pose questions of responsibility in contemporary society.

[90] When Agamben notes the non-criminal sphere in which 'sacrifice' takes place (*homo sacer* is the life that can "be killed without the commission of a homicide") he similarly raises the point that biopower operates in a sphere that is in relation to but outside the law (*Homo Sacer*, 136).

In order to understand these questions in theatrical terms, I now turn to Cixous' play, *The Perjured City*. The play does not address governmentality as such, or the problem of the tensions between its logic and the logic of law that I have outlined above in relation to the Affair. But in my reading, it does allow for reflection on the phenomenon and on the problem of those tensions as a *generic* problem, a problem of drama. As the play responds to the Affair and the trial in an oppositional, resistant spirit, it raises the more specific question of *political* drama. Given the problem of the tensions and untranslatability between the logic of governmentality and the dramatic logic of law I have outlined above, the question to ask of the play is: can something like the Contaminated Blood Affair be cast in the mode of (political) drama?

3. Hélène Cixous' The Perjured City*: The desire for a dramatic political opposition*

The Perjured City was written in 1992-1993 right after the first round of criminal trials in the Affair took place in the early 1990s.[91] The play's developments take place foremost in a cemetery, the 'City of the Dead', a parallel city that provides a home to a group of outcasts who are cast as 'the Chorus'. The cemetery is guarded by a character who first appears as 'the Caretaker', and reveals herself to be Aeschylus, the tragic poet who wrote the *Oresteia*, who in Cixous' play is an elderly woman. Upon meeting the Mother, who left what is called 'the City' ('*la ville*') in disappointment over the trial of the two doctors who were accused for the death of her sons, Aeschylus proceeds to summon the Furies, Greek goddesses who stand for a form of justice through vengeance, the event to which the play's subtitle, *'The Reawakening of the Furies'*, refers. With the help of the Furies, Aeschylus and the inhabitants of the cemetery organize an alternative trial and kidnap the doctors in order to interrogate them. But the alternative trial, too, fails to come to judgment on the matter of the doctors' responsibility for the children's death.

After this failure, the play ends in a fateful and abrupt way with a somewhat absurd scene. The City's newly elected leader, a tyrant who goes by the name of 'Forzza,' orders the piercing of the dam that looms over The City of the Dead, causing it to be flooded out and its inhabitants to die. This disastrous ending, however, turns out not to be the absolute end to the play. After the scene of the flood, Aeschylus is called upon by another character to intervene and 'rewrite' the ending. This call is followed by a scene entitled, 'Epilogue,' in which the characters are hoisted out of the water and resurrected into an afterlife that is located

[91] See Ayres and Erlingsdóttir for other discussions of the play in relation to the trial in the Affair.

somewhere far away in the night sky, from which the characters look down onto the Earth, and in which they seem to finally have found some peace, in which the Mother is reunited with her sons, and in which The City's outcasts directly address the audience that will be, or will have been, in the theatre at the performance of the play, and tell them to keep up the fight for justice.

The play here responds to the Affair in an oppositional spirit with the desire to represent the claims of those it presents as 'the oppressed', of power's 'victims'. But given the tension between the logic of governmentality and that of law, the question arises if the situation of the Contaminated Blood Affair allows to be framed, to be captured, in such oppositional terms. In an interview between Cixous and Eric Prenowitz, editor of Cixous' collected plays, entitled 'On Theatre' and published along with the English translation of *The Perjured City*, Cixous describes how the play arose out of a general spirit of resistance in which she and Arianne Mnouchkin, director of the *Théâtre du Soleil*, the company for which Cixous wrote the play and who produced and performed it, dwelled in the period of their cooperation. Cixous and Mnouchkin met in 1972, when Cixous introduced Mnouchkin to Michel Foucault to involve her in the *Groupe Information Prison*, a protest movement co-founded by Foucault that was concerned with providing prisoners with access to information through various media outlets ("Enter the Theatre" 27). The first play they made together was to be performed outside of a prison as part of the latter group's endeavors, but a police intervention prevented it from taking place ("Enter the Theatre" 27). In the following decade, Cixous relates, the two teamed up to participate in many political demonstrations, for the women's movement and other societal "outcasts and … prisoners of the universe," as she puts it ("Enter the Theatre" 28).

The play's political spirit takes the form of a general resistance against the City, and a more particular one, against the city as a patriarchal structure. In general, the mother calls for rebellion at the beginning of the play, and for going "underground" to "stir up the offended crowds," a call that resounds throughout the play ("The Perjured City" 100). The play also presents a number of Biblical references to 'just,' divine, violence. The children's family name, Ezekiel, refers to the prophet who announced the destruction of the city of Jerusalem after it had fallen into sin. The younger brother's name, Benjamin, refers to the story of Joseph and his brothers, and to Benjamin's innocence. The older brother's name, Daniel, refers to the biblical figure Daniel who is known for his apocalyptic visions and promise that God will save the people of Israel from oppression. While these references seem to install a religious element of fate and submission to divine wisdom and rule, the play presents the

Ezekiel boys as stirring up a fight, with Daniel especially calling his brother to join him in going to war: "My mission is to pursue our murderers/ And to take them, livid with fright/ To the altar of atonement" (108). They propose to "rouse up all the divine officials/ Who might be willing to help" (108-109), and it is upon their arousing call that the figure of the Furies, Greek goddesses of justice by revenge, enter on stage.

The play also places itself in the tradition of a feminist critique of patriarchy.[92] *The Perjured City*'s protagonist is a woman who has been wounded by what is presented as a patriarchal society, surrounded by a group of outcasts, the inhabitants of the City of the Dead. But the play's feminist impetus is most strongly expressed in Cixous' choice of intertext. The mythical universe the playwright introduces through her references to the last part of Aeschylus' Oresteian trilogy, *The Eumenides*, affords a mode of "poeticization," as she calls it, but also introduces a story that has become canonical in the tradition of feminist critique. *The Eumenides* not only tells the myth of origin of institutional criminal law, of law as an order that is tied to the city, the *polis*, and of the figures of the trial and judgment, it was interpreted by thinkers of sexual difference, that is, post-structuralist feminism, as the founding myth of patriarchy as well.[93]

For Luce Irigaray, Cixous' colleague in the project of post-structuralist feminism, the *Oresteia* provides a seminal text for a critique of patriarchy. In her essay, 'The bodily encounter with the mother,' Irigaray remarks that before the founding "murder of the father" Freud described in *Totem and Taboo*, a "more archaic murder" took place, namely, of the mother, "necessitated by the establishment of a certain order in the polis" (Irigaray 36). At a primary level, she writes, society and culture function "on the basis of a matricide," and the murder of Clytemnestra in the *Oresteia* figures as her chief example (36). At the beginning of the *Oresteia*, Agamemnon returned from the war in Troy, bringing along his mistress, Cassandra, to the home he shared with his wife, Clytemnestra. Before Agamemnon and his troops set out for Troy, he sacrificed their daughter, Iphigenia, to appease the god Artemis and obtain the winds necessary for the journey. Upon Agamemnon's return, Clytemnestra decides to kill him to avenge her daughter's life. She pays for her act with her own life when, commanded by the god Apollo, Orestes kills her in turn to avenge his father. For Irigaray, this murder has the effect of installing a patriarchal order, not only for humans, but amongst the

[92] See Walker for a reading of the play in light of feminist politics and political theatre that differs strongly from mine.

[93] This strand of feminism, the tradition in which Cixous herself participated, focused on bodily differences between the sexes, on the question of feminine writing (*écriture feminine*) and the idea of a feminine economy that differs from the given masculine one. For some of Cixous' contributions to the field, see, "The Laugh of the Medusa," and *Readings*, amongst other works.

gods as well, as it confirms what she calls Zeus' "appropriation of the archaic powers of mother-earth" and his fatherly rule amongst the gods (37).

After his deed, Orestes is hunted by the Furies, goddesses of justice by revenge who were presented as a group of enraged, female beings, who were part of the old divine order (by implication, closer to the order of 'mother-earth'), and who, according to Aeschylus' play, were especially concerned with justice within the family, the household, including justice for guests and for mothers, more specifically (*Oresteia* 152, 157, 160). In her reading of the myth, Irigaray presents the Furies as "women in revolt, rising up like revolutionary hysterics against the patriarchal power in the process of being established" (37). But at the end of the *Oresteia*, after members of the new generation of Gods, Apollo and Athena, organize a trial between Orestes and the Furies, the Furies are lured into giving up their fight and joining the forces of the City of Athens. They are effectively shut up in caves near the City, subjected to the newly established order. Cixous comments on this in an interview, when she remarks on the production of her translation of the last part in the Oresteian trilogy, 'The Eumenides':

> At the end of *The Eumenides*, everything is unbearable, the mother does not obtain justice, the matricidal son recovers his assets, and the old goddesses that called for vengeance let themselves be buried like old lambs under the earth. ("Enter the Theatre" 34)

But in *The Perjured City*, those goddesses are "awakened" after having slept underground "for 5000 years," Cixous writes in the Preface that frames the written version of the play, by a "cry that pierces the heavy layers of silence" ("The Perjured City" 90). Silence is the central problem in the essay in which Irigaray reads the Oresteia, too. At the conclusion of that essay, Irigaray proposes that women break the silence to which they are condemned by men and unleash their so-called 'hysterical' discourses. As I discussed above, the problem of silence also pervaded the trial, as the organizations involved in the Affair, the CNTS and the state, attempted to settle with victims to prevent them from speaking out in public (see the references, above, to Steffen 113 and Trebilcock 1453).

This spirit marks the beginning of the play, as it opens up with a monologue by the Mother who announces that the "accursed City" has aroused in her "a cry stronger" than herself (Cixous "The Perjured City" 91). The Mother presents her cry as necessary because of the silence that has marked the response to the Affair, and that silence is presented as

women's silence when the mother turns to the audience and addresses other mothers and proposes that they "cry out" about the Affair. She says:

> Habit, you who take the burning bitterness from the salt of tears,
> Who blunt the ear and dull the sharp cry,
> Muting everything! Leveller, unnerver of souls,
> Absent voice, bitch, empty throat,
> I blame you first,
> Demon dripping drops of tepid breath
> Into the shrill trumpets of alarm,
> To silence the shouting angels.
> If only I could, outside your walls, become a rebel trumpet
> Of sounds intolerable to the ears of wolves![94] (92-93)

This call to women to speak up is repeated at the play's end, when the Mother and her fellow protesters have passed over into the afterlife, and she addresses the audience:

> I'm going to put my words, my thoughts, my angers
> Underground, beneath your feet.
> But out of this earth pregnant with my secrets
> The tree of cries must grow. Or else
> Never again will a human being with light-filled eyes
> Come to maturity in this country.
> Our play is over. May yours begin.
> It is your turn to insist that what is just
> Comes to pass justly.
> In memory,
> I leave you my story with its taste of tears and milk.[95] (182-183)

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[94] *Accoutumance, toi qui enlèves aux larmes le cuisant de leur sel,/ Aux oreillers leur vigilance, aux cris la note aiguë,/ Sourdine ! Raboteuse, dénerveuse des âmes/ Absence de voix, Salope, gorge vide, / C'est à toi d'abord que je m'en prends,/ Démon qui verse quelques gouttes d'haleine tiède/ Dans les hautes trompettes d'alarme/ Et rend les anges crieurs totalement inaudibles./ Puissé-je, hors de tes murs, devenir une trompette rebelle,/ Aux accents intolérables pour les oreilles des loups.* (*La Ville parjure* 21)

[95] *Je vais mettre mes mots, mes pensées, mes fureurs/ En terre, sous vos pieds./ Mais il faut que de toutes ces terres grosses de mes secrets/ Pousse l'arbre du cri. Sinon/ Plus jamais d'être humain aux yeux pleins de lumière/ Ne mûrira dans ce pays./ Notre pièce est finie. Mais que la vôtre commence./ À votre tour obstinez-vous à vouloir que le juste/ Advienne justement./ En souvenir/ Je vous laisse mon histoire au goût de larmes et de lait.* (*La Ville parjure* 202)

The passage overflows with metaphors through which the idea of speaking up is tied to the bodily, motherly, or womanly, functions of birthing and nursing, i.e. by means of which speaking up is a gendered question, a question of sexual difference. The Mother appears not only as a woman speaking, but as a woman speaking about the necessity to speak *as a woman*, a repetition of Irigaray's discourse in 'The bodily encounter', and of Cixous' own early feminist writing ("The Laugh of the Medusa"). Moreover, this discourse on women's self-expression frames the play as it marks both its beginning and end. The figure of the writer or poet is connected to the motherly as well, as the play introduces both the poet-guardian 'Aeschylus' and another mythical poet-character called 'Night' as mothers, and both are presented as acting at the metadramatic level of making or writing the play or being able to intervene in its course. Although the Mother's story in the play is singular, especially in connection to the Contaminated Blood Affair, the Oresteia as intertext turns the Affair into a feminist question, and the Mother's fight in the play into the fight against patriarchy.

In that context it is of interest that from the very beginning of *The Perjured City* the Mother is plagued by ambiguous spirits. She not only figures as a character 'in opposition,' fighting and speaking up, but she also appears to be tired. Throughout the play she repeatedly expresses the desire to give up on the fight that she also still wants to deliver. When the Mother suggests rebellion in the beginning of the play, for example, and exclaims, "if only I could become a rebel trumpet," this already occurs in the mode of a present regret, in the mode of an impossibility that she wishes she would be able to change, implying that she is not. The formulation is not 'I cannot', and not 'I want', but 'I wish I could,' where the 'wish' places double emphasis on the fact of the impossibility or impotence. Later, when the trial seems to run into a deadlock, she exclaims, "Let's make an end of this! I am tired!" ("The Perjured City" 149) Later still, when they are truly about to give it up, she says, in despair:

> Ah! It's your fault, hope,
> If I wait, I'll wait for that which cannot happen.
> Because of this crazy hope which won't die.
> Nothing rekindles itself more obstinately
> Than this cruel spark that is born to die,
> Born to die
> And in rebirth renews the suffering.

I push it back, it clings to me,
I cut off its fingers, they grow back.
Stop, hope, let me go!
Ah! You will die only with me!
I no longer want to hope.
…
I don't want to want anything. Never again.[96] (170-171)

The mother has not only lost hope, she has also lost the desire to hope, even the desire to desire, which presents the ultimate exhaustion of the spirit of hope, the ultimate depression of any possible desire.

In an early scene, when the Mother has just decided to form a rebel movement, Aeschylus warns her of the pitfalls of vengeance. The Mother replies that she is well aware that vengeance turns everything "into its opposite" and that she would become the executioner she is blaming for executing, and Aeschylus suggests that she take the lawyers up on their offer of money. The Mother responds that she wants neither such an offer, nor a fight that takes the form of vengeance, because she would lose her honor that way, and threatens to leave the cemetery and give up on having anything to do with the matter. Aeschylus quickly turns around, acting as if he was only testing the Mother to see if her resistant spirit would hold up ("The Perjured City" 101). For Aeschylus, the Mother's response is telling of the promise she bears for the cause of justice, as when he says: "I didn't dare believe that you might exist" (101). Nevertheless, the scene introduces an ambiguity in the play, or rather an indecisiveness as to finding a fitting mode of response to the situation of the Affair. The Furies are summoned, in the end, introducing the mode of justice by vengeance, and given the play's subtitle and the role they are attributed in the feminist reading of the Oresteia a reader would assume their importance, but the 'justice' they offer has already been undermined before they even appear. Towards the end, when the alternative trial set up in the trial runs into a deadlock, the Furies offer their vengeance again, and the Mother refuses it.

[96] *Ah! C'est ta faute, espoir,/ Si j'attends, j'attends ce qui ne peut pas arriver./ Oui, c'est à cause de ce fou d'espoir qui ne meurt pas./ Rien de plus obstiné à reprendre vie/ Que cette cruelle étincelle qui naît pour mourir/ Qui naît pour mourir/ Et en renaissant chaque fois, nous ramène à souffrir./ Je le repousse, il s'accroche à moi/ Je lui coupe les doigts, les doigts repoussent./ Arrête, espoir, lâche-moi !/ Ah ! Tu ne mourras donc qu'avec moi !/ Je ne veux plus espérer./ … Je ne veux rien vouloir. Plus jamais.* (*La Ville parjure* 179-180)

Along with the Mother, the other inhabitants of the cemetery also seem to be caught in between an insurgent energy and a cynical or depressed mode that undermines the spirit in which the play was written according to its author. After the Mother has first expressed her desire to fight for justice, the Chorus comments: "She wants something to counter hopelessness" (102). In an Aeschylean-style dialogue between 'Strophe' and 'Antistrophe', in which the parties move carefully from their state of having given up dreaming – "It's been so long since I last dreamed / I have no more ideas" (104) – to the more insurgent: "Let's change the world! Let's try!" (104). They propose to hold a "true" trial, in place of the "dead trial that was held," and to kidnap the 'opponents', the accused, to make them appear in the trial (104-105). Aeschylus comments: "If you bring the murderers back here/ Despair will flee" (105). But hope turns to doubt when Strophe asks: "But how can we manage all this?/ Because, just think, if we were to fail/ In another version, see what I mean?" The doubt could well be the doubt of the playwright, in taking on the task to 'dispense justice' in the theatre where it had failed in the real world.

Doubt then turns into 'giving up' with Antistrophe: "There was a time I was invincible./ Ah, if only this whole affair had fallen upon us/ Some twenty years ago./ I was stronger then. And so were you,/ And so was he" (106). The exchange ends with Night's appearance, and her asking "You won't even try? You give up?". The whole Chorus, reunited again, answers, "Excuse me, it's getting late, I'm going to bed." Exhaustion wins from the insurgent spirit that flared up momentarily. The Chorus: "Victory does not always come from combat./ One can also wait." The proposed passive mode of 'waiting' is also what the Mother gives into. For her, too, the scene ends in a mixture of tiredness, and resignation to waiting. The spirit of insurgence is turned into an anticipation, the fight is delayed and takes on the form of a promise: "Have no doubt, the day will come/ When my wreck and I/ Will bear unheard-of witness./ Ah, if I could sleep a thousand years!" (107)

Central to the play is a dialogue scene in which two Chorus members, 'Thessaloniki' and 'Jean-Christophe Lamerd', comment on the play's proceedings with ambiguous and shifting sentiments: with dramatic contrast, the pair is cast as being either a 'believer' in justice or a 'cynic'. Tellingly, the participants change outlook on the question: the cynic turns believer and vice versa. The dialogue starts out with Thessaloniki's cynicism. Referring to the arrival of the Furies on the scene, he addresses Lamerd:

> So: three old goats arrive, even skinnier than we are, they spew big words, bellowing with a strange accent,

And presto, you're a believer! Justice! Truth!
Soap bubbles, and you take them for constellations.
Twenty-five years of scorn, of starvation, of passing the hat around,
That didn't teach you anything?[97] (115)

Lamerd responds that it gladdens his heart "to believe" that he sees "Justice coming," to which Thessaloniki replies: "Don't you know how dangerous it is to hope?" (115) Later in the dialogue he emphasizes this further: "The ones we wait for never come,/ It's always like that./ The Messiah doesn't come,/ Justice doesn't come,/ The beautiful gods do not respond." Lamerd accuses him of always preaching distrust and despair," and comments that "It's easy not to hope" (116). He calls Thessaloniki "a walking corpse". But then the scene turns around, suddenly, as the two chorus members refer to a noise they hear which seems to be the announcement of the next scene, in which the Furies reappear before Aeschylus and Night with the two doctors they have captured. In their anticipation of the "true trial" Thessaloniki is caught by a spark of hope, "the Incredible may happen!", but Lamerd has changed into the opposite direction: "I fear disappointment!" (116-117) The question that poses itself, consequently, is how we can make sense of these opposing sentiments and their crossing over between the characters.

The same happens in a later dialogue between two chorus members, 'Abel' and 'Eliminate', who enter the stage when the trial has run into a deadlock. Where Eliminate believes that "the time of our triumph will come", Abel responds with the cynical statement that "All stories end badly," and "It will always be like that." (150) Abel is cynical because he is aware of the fact that politicians in the City are capitalizing on the story of their suffering: "In time of Peace we are but flies for them,/ In time of War we are ammunition./ We are never human beings." (151) After their dialogue the Chorus enters the stage and confirms the spirit of skepticism about the trial, formulated again in words of expectation, in the future 'to come': "It's not here, nor during this night, that something will finally happen./ I, too, see that nothing is coming." (152) The expectation is projected onto the arrival of a group of doctors, a "National Council", who are asked to testify about the two accused doctors' guilt. Yet the

[97] *Alors trois vieilles biques arrivent, encore plus déplumées que nous, elles lancent des mots en l'air, en mugissant, avec un drôle accent,/ Et ça y est, tu y crois ! Justice ! Vérité !/ Des bulles de savon et tu prends ça pour des constellations./ Vingt-cinq années de vaches maigres, de manche, de mépris/ Ça ne t'a rien appris ?* (*La Ville parjure* 63)

Chorus is skeptical in advance, stating that if "they come, it will be exactly as if they hadn't come!" (152)

In contradiction to the figure of the Chorus in Greek tragedy, where it was an anonymous collective that represented the demos, the (political) community (Kitto 260), a collective,[98] the Chorus in *The Perjured City* negates itself by singling out individuals, with proper names, as its members, in these two scenes. Tellingly, those individuals are precisely struggling with their agency, with their ability to respond as individuals to the Affair, and with the question if it makes sense to form a collective endeavor, a movement. They also raise the question if 'hope' and 'belief in Justice' make sense as ways of 'being', ways of 'living', as sentiments, in relation to the Affair. 'Hope' and 'belief,' I will point out in the next section, are dramatic sentiments, or dramatic ways of living, as they project the fantasy that life can be better than it is, if only we act up to make it such. The question posed between the characters and their conflicting and shifting sentiments is whether it makes sense, makes sense at all, to hold on to such a fantasy, and by implication, suggestibly, by the fantasy of intentional agency that supports it. That question then undermines the oppositional spirit the playwright seems to have been looking for, given how the play is framed, because an oppositional spirit is founded on the idea that something can be gained from the fight.

If we take the playwright at her word with respect to the play's political incentive, resistant spirit, and feminist and anti-patriarchal framing, the ambiguity and conflicting sentiments would have had to have slipped into the play unintentionally, as the Affair's impact on the unconscious that plagues the playwright's attempt to respond to it consciously. Yet what light does this ambiguity shed on the specific historical case and political conditions, to which the play responds? Or, to raise the question in a more suggestive way: could the ambiguity and the contradictions that characterize the play be a sign of the impossibility to dramatize something like the Affair not only in legal but also in political terms?

4. The limits of the dramatic mode and the desire for the political in Berlant's Cruel Optimism

In her reflections on the notion of governmentality, in 'Slow Death,' a chapter of her book, *Cruel Optimism*, Lauren Berlant connects Foucault's work to a reflection on the genre of

[98] Note that in "The Demos in Greek Tragedy," Carter warns against "the simple equation of chorus with demos" in tragic scholarship (50).

drama; that is, drama not necessarily in the sense of plays and their theatrical productions, but in the generic sense of a way of acting and narrativizing that is particular to dramatic works but that can be read in an analysis of other forms of cultural production as well. In what follows, I trace her use of the theatrical metaphor, and more specifically her distinction between the 'dramatic' and the 'undramatic', in the context of her thoughts on the shift from a society primarily based on the sovereign regime of power to a society based on biopower and governmentality. In a final chapter, Berlant raises the question of the possibility of 'being political' in terms of the distinction between the dramatic and the undramatic as well, distinguishing 'old-school' civil society politics, which she considers to be no longer accessible for most people in the present, from artistic-activistic practices that break with its logic and may open up a sphere beyond it. From Berlant's generic distinction between the dramatic and the undramatic in her analyses of political artworks I develop a way of responding to the question provoked by Cixous' play – the question if it is possible to dramatize the Affair in political terms. In this section Berlant helps me to trace the limits of what is possible in the dramatic mode, limits into which the play runs with its ambiguity and conflicting sentiments. This analysis subsequently provokes me to raise the question if we need to look beyond the generic mode of drama instead.

In *Cruel Optimism*, Berlant describes how living in present neo-liberal times, in the regime of governmentality to many means that they no longer have access to the old fantasy of the good life (2-3). This fantasy, which is based on a dramatic notion of subjectivity Berlant characterizes as "individual agency", no longer holds up, it seems, because this kind of agency is not actually practiced by most people (*Cruel Optimism* 96). Berlant criticizes contemporary understandings of the concept of sovereignty that project it onto the image of "individual autonomy" which:

> overidentifies the similarity of self-control to [a] fantasy of sovereign performativity and state control over geographical boundaries. It thereby affords a militaristic and melodramatic view of individual agency by casting the human as most fully itself when assuming the spectacular posture of performative action. (*Cruel Optimism* 96)

Instead of portraying this kind of melodramatic performativity, Berlant holds that most people nowadays live in what she describes as distinctly "undramatic" ways (*Cruel Optimism* 101 and 115). Berlant analyzes how people's modes of engagement with the present take the form of "drifting," "coasting," and "hesitation," but also "treading water" and "self-forgetting," and

even of an incapacity for negative action such as "drifting off, or going off the cliff," or for "dramatic refusal" (*Cruel Optimism* 63, 81, 200, 204, 221). People cannot seem to muster up the intentionality and the effectiveness necessary to "perform" the "sovereignty" that was granted to them by the social-democratic state in the form of civil rights and citizenship, that state-form's mode of self-representation, and it is unclear where the responsibility lies for this failure. In fact, the impossibility to attribute responsibility for this failure and a general lack of a sense of causality appear to be a defining part of the problem.

Berlant develops this last point more specifically in relation to her primary example in the 'Slow Death' chapter (see *Cruel Optimism* 110 and 114): obesity. With reference to Foucault's *Society Must Be Defended*, Berlant characterizes obesity as an "endemic," which, unlike the epidemic, is the category of "permanent factors" that "sapped the population's strength" and "cost money" (*Cruel Optimism* 97). Following the spirit of Foucault's reflections on the matter outlined above, Berlant's concern is what she calls the "environmental" logic of governmentality that causes "agency and causality" to be "dispersed" in such a way that no one – individuals, corporations, or the state – seems to be acting consciously to harm anyone or themselves, and yet people suffer and costs are made and have to be born (*Cruel Optimism* 114). With reference to Greg Critser's book *Fat Land: How Americans Became the Fattest People in the World*, which she calls, with another reference to drama as genre, a "tragicomic story about the politically driven promotion of fructose over sucrose and palm oil over soy oil during the Nixon administration's crisis over inflation in the 1970s", Berlant notes that:

> no one who was making these decisions meant to do anything to harm individuals or a working-class population's bodies; the aim was to control international markets, bankrupt struggling southern and Pacific Rim production communities, and drive food prices down, a paradoxical aid to the poor who were about to be harmed by the food to come. No one meant to fatten up the world population scarily. (*Cruel Optimism* 111-112)

The main point of Berlant's analysis of obesity thus appears to be that responsibility can only be attributed when we hold on to a notion of subjectivity that seems no longer to work in the regime of governmentality because of its 'environmental' character, because of the dispersion of agency and causality that marks its logic. Indeed, Berlant proposes that the category of the 'event,' which was central to the tradition of trauma theory and which still suggests

happenings that were caused, with acts that have agents, needs to be replaced by the category of 'environment,' which does more justice to the non-evental, non-agential nature of governmentality (*Cruel Optimism* 100). Like in Foucault's analysis, and although she does not discuss this explicitly, Berlant's reflections on governmentality present it as being in tension with juridical logic, which cannot operate on the basis of 'dispersed' agency and causality, and which cannot translate 'non-events' into criminal acts. No one could be put on trial for causing obesity, as it were, and yet it causes tremendous harm, bears immense costs, and people suffer from it severely. However, they do not suffer in the way one suffers from an incidental wound; their suffering is a process, continuous, unexceptional and uneventful.

This implies that Berlant's presentation of the 'undramatic' as the mode of living characteristic for the regime of biopower/governmentality relates to, but differs from, the dramatic modes contrasted by Hans-Thies Lehmann in *Postdramatic Theatre*. If drama and the potential for dramatization rely on a logic of acts by means of which an imitation of reality can be produced, postdramatic theatre, too, relies on a logic of acts, albeit in a slightly different way. In so far as the political potential of postdrama is a consequence of its potential to undermine, shock, or traumatize reality, through performances and other kinds of interventions, this relies on the logic of 'events,' and the mode of agency involved. And in so far as it is a form of theatre that deals with and responds to traumatic events that occurred in the twentieth century, it does too. If previous chapters dealt with artistic and institutional practices that produced postdramatic ways of undermining dramatic legal forms, and with a failed trial that indicated a postdramatic medial form and that led to a desire for re-dramatization, the case studied in this chapter raises the question if the dichotomy between drama and postdrama suffices for an analysis of its key problems or for a consideration of responses to its problems. In other words, how to make sense of, or respond to, the mode of life and form of agency Berlant captures with the term 'undramatic,' theatrically?

In the last chapter of *Cruel Optimism*, entitled 'On the Desire for the Political,' Berlant appears to consider this question in relation to politics. I take her work to point out that we are running into the limits of discursive dramatization as it occurs in 'the political' as well. Politics also functions in the dramatic register, as it is based on the same liberal, intentional understanding of subjectivity, of the subject as an autonomously acting individual, as law is, with the given example of the dramatic, representational form of parliamentary democracy, or

even of protest and rights movements.[99] The tensions between the logic of governmentality and law thus stretches out to encompass also the mechanisms of dramatization that constitute and sustain the 'old-school' political. Such discourses pick up on the juridical rhetoric of responsibility and justice and seem to run into the same problems that the mechanisms of law did in the Contaminated Blood Affair. As such, the tensions between the logic of governmentality and the dramatic mode of law are echoed in an incongruity between the logic of governmentality and the spirit of oppositional politics. The latter end up "deflating," as Berlant puts it, but in an "undramatic" way (250). This undramatic 'political' displaces the old 'political' that was understood as "a state-citizen relation" (263). But it does introduce another kind of practice that, according to Berlant, "is always being encountered and invented among people inventing life together, when they can" (263). Yet, she indicates, it remains unclear what that will bring. This hesitation on Berlant's part concerning the deflated politics of "inventing life together" seems, paradoxically, to flow out of the "undramatic" nature of the practices, or non-practices, it consists in.

Although Berlant's work is empirical, in the sense that it describes contemporary ways of living by analyzing artworks and cultural practices, I propose that her work can be taken speculatively as well, in that it also reflects what *can* be done, or, more specifically, what can be done in relation to, or in response to, problems structured by the logic of governmentality. The distinction Berlant makes between the two modes, 'dramatic' and 'undramatic', I argue, can be said to imply that certain forms of acting are no longer possible, but, as she suggests in the conclusion of her book, other forms of (non-)acting might be. The tension between the mode of drama, through which we tend to understand individuals, and the undramatic stuckness, the "impasse," of life in the regime of governmentality, also marks the play, *The Perjured City*. Where Berlant emphasizes the undramatic character of her objects, *The Perjured City* rather brings the two modes into conflict by pitting a desire for drama against an exhaustion of, or with, what Berlant calls its 'inflated rhetoric'. Through this conflict, the play, itself of course a work of drama, explores at one and the same time the limits and the potential of the mode of drama with respect to the juridico-political context of the Contaminated Blood Affair, as exemplified in the dialogue scenes between the Chorus members, Thessaloniki and Jean-Pierre Lamerd, and Abel and Eliminate, that I discussed in the previous section. In the context of the Affair there is a desire for recasting the situation in

[99] See also my discussion of the political conception of the relation between law and theatre or theatricality in the introduction to this dissertation.

the dramatic terms of conscious acts and responsibility, while at the same time there appears to be an awareness, perhaps unconscious, of the limited potential of such dramatic categories in relation to the situation in which the play's characters find themselves, even if this awareness is only expressed in the ambiguity the characters feel towards the spirit of resistance and their exhaustion with the idea of continuing to fight. The question then becomes whether this ambiguity itself should be taken as a mode of resistance.

According to Berlant, living in the regime of biopower/governmentality often takes the shape of "unconscious and explicit desires *not* to be an inflated ego deploying power and manifesting intention" (*Cruel Optimism* 98), i.e. of an (albeit possibly unconscious) anti-dramatic mode, or *non*-dramatic, rather than an *un*dramatic, mode. Berlant comments:

> we persist in an attachment to a fantasy that in the truly lived life emotions are always heightened and expressed in modes of effective agency that ought justly to be and are ultimately consequential or performatively sovereign. In this habit of representing the intentional subject, a manifest lack of self-cultivating attention can easily become recast as irresponsibility, shallowness, resistance, refusal, or incapacity; and habit itself can begin to look overmeaningful, such that addiction, reaction formation, conventional gesture clusters, or just being different can be read as heroic placeholders for resistance to something, affirmation of something, or a world-transformative desire (*Cruel Optimism* 99).

In other words, Berlant warns us not to interpret the undramatic mode as a dramatic gesture after all, to resist projecting onto it the fantasy that the undramatic is *really* the work of an effective agency enacting a "world-transformative desire". Sometimes people truly are lost or stuck; sometimes they really are without desire to transform the world, or even incapable to take control of their own life, incapable to muster up the energy to act up, and this is significant in itself – significant of the exhausted, overwhelmed state in which many live the present.

In similar fashion, Berlant warns against more public politicized responses to situations produced by the 'environment' of biopower/governmentality. Talking about the unequal distribution of longevity across ethnic groups in the American population, she writes:

> Frequently, when such mass patterns are recognized at all, they are strategically dramatized in contradictory ways: in paranoid fashion, as the effects of an enemy

> institution's intentionally inhuman relation to consumers and clients (corporate capitalism, physicians, insurance companies, and so on) […] (*Cruel Optimism* 105).

Cixous' feminist framing of the Contaminated Blood Affair, and the feminist interpretation of *The Perjured City*, I suggest, would be such an unnecessary "paranoid" response, a "strategic dramatization" in oppositional terms, i.e. a response that projects an "enemy".[100] But, Berlant writes: "as the concept of biopower indicates, there is no good reason to adopt a strictly paranoid style" (*Cruel Optimism* 105):

> While employers frequently neglect the health of their workplaces and sacrifice laboring bodies to profit, it's rare (but not unheard of) that corporate or individual sovereigns act deliberately to harm consuming bodies—that's *usually* collateral damage. (*Cruel Optimism* 105, italics in original)

The usual lack of deliberate acting stressed in this passage indicates the shift from the dramatic mode killing took, according to Foucault, in the regime of sovereign power, to the 'undramatic,' mode of 'letting die' that characterizes the regime of biopower and governmentality. Indeed, Foucault, too, warns against reducing all discussions of power to being about a master figure and relationships of obedience (*Security, Territory, Population* 55-56, 65). Berlant's work seems to imply that political questions that are about master-slave relations or politics of representation can be represented in the dramatic mode, but governmentality resists such 'casting', as she puts it, using another metaphor from the world of drama. As such, we could say that the play, to the extent that it has turned the Affair into a feminist question, 'misses' the precise problem of power that is at stake. I suggest that it is because of the mismatch between the mode of drama and the power the play tries to oppose that the play becomes stuck in ambiguity and conflicting and shifting sentiments, that it reproduces the "impasse," to use one of Berlant's terms, of the situation to which a response is being sought.

It is noteworthy that this impasse occurs not only at the level of the plot, at the diegetic level, but also at the metadramatic, extra-diegetic level, through the play's reflections on its own process of coming into being. In an interview with Eric Prenowitz, Cixous comments on

[100] Note the rapport of Berlant's point with the discussion of Žižek's reflections on conspiracy theories and their oppositional scheme in terms of dramatization in the previous chapter.

how she wrote the ending of the play. Prenowitz points out that it is a well-known fact that Cixous' process of writing for the Théâtre du Soleil has an open character. He explains that Cixous is "actively involved in the staging of [her] plays …, reworking [her] text in response to the obstacles or the possibilities that arise in rehearsals" (5). Cixous then tells that when she first presented the actors of the Théâtre du Soleil with the play's ending, which she wrote only towards the end of rehearsals, they were devastated and asked for a new ending. Cixous wrote that new ending in the form of the scene called 'Epilogue,' which takes into consideration the actors' devastation, their 'need' for a better ending, as well as the awareness it produced in her of the fact that there would be victims of the Affair in the audience once the play would enter the theatres ('Enter the Theatre' 34).

The epilogue, which is called for by Night and which is written on the spot by the diegetic playwright-character, Aeschylus, makes explicit, metadramatically, the playwright's power to write the ending she wishes for the play, or more specifically, her power to rewrite the ending should the first ending not have the desired effect. Although it seems as though the playwright presents herself, in that ending, through her capacity to rewrite it, as being all-powerful, sovereign, the fact that she decided to leave both endings intact, thus laying bare the process of making the play – with a 'flawed' or 'failed' ending and an attempt to 'better' it, with a first wild and abrupt gesture and then a more careful and gentle one – exhibits explicitly the playwright's struggle in searching for a way of dealing with the situation she is confronted with in the Contaminated Blood Affair. These signs of struggle also reflect on the ambiguity and the conflicting sentiments I discussed above, which appear even more clearly now as signs of the struggle to find a fitting mode of response; a struggle that remains unresolved, but is exposed, as one layer of the play's significance. If we read the play's signs of its process of being produced, it conveys a sense of the playwright's 'stuckness' in the question of how to respond to the situation of the Affair, which in turn reflects the impasse of that situation itself; an indecisiveness that sharply contrasts with the more 'dramatic' decisiveness of the oppositional spirit that marks the feminist framing, or a feminist reading of the play. If we read it at the metadramatic level, I propose that the play even comes to be *about* the experience of this stuckness, the impasse.

Between the diegetic and the extra-diegetic level there is not only a conflict of sentiments, there is also ambiguity about whether the playwright is in control of the drama. Next to the indecisive ending, an earlier scene late in the play provides an example, namely when the Chorus ask Aeschylus if "this combat of hope" is going to last for much longer, and ask him, "How will this end?" (171). Aeschylus' answer gives the reader a sense that he

promises a happy ending, when he invites the chorus to "Follow [him] to the final scene" and states that "it will be a very special scene" (171). Yet he is interrupted ("…. But what is this?") by the onset of the next scene, which seems to be quite different from the one he meant the Chorus to follow him to. The next scene then announces that the tyrannical Forzza has won the City's elections and moves the play towards its disastrous ending, the Mother's refusal of Forzza's offer of financial compensation in return for her giving up her fight, and Forzza's decision to pierce the dam and flood the cemetery, killing all of the characters. Through the metadramatic moment that preceded it, this event is presented as having been counter to the intention of the playwright. It presents the playwright as possessing both a power of making and not being completely in command of that power.

The dramatic mode in Cixous' play thus mirrors, in a way, the failure of dramatization in the trial. The play's promise, its presentation of drama's ability to nevertheless present a political, resistant response to that trial, and its failure to deliver on that promise, present an ambiguity in relation to the genre that I propose to characterize as 'postdramatic' in a way that Lehmann's *Postdramatic Theatre* does not completely account for. Rather than a conscious shift away from the dramatic mode, drama in *The Perjured City* fails because the Affair presents the kind of situation in which intentionality, the dramatic mode of acting, has become exhausted. Consequently, at the metadramatic level, the level of the diegetic and extra-diegetic reflections on playwriting, the play makes apparent that the 'performative sovereignty' necessary for writing drama in the first place has crumbled as well. The issue then becomes how the play's presentation of the exhaustion of drama as a mode of response to the kind of situation presented by the Affair, its hesitations and contradictions vis-à-vis 'old school' political theatre might nevertheless be understood as a form of political theatre.

In the final chapter of *Cruel Optimism*, Berlant raises the question what could be the political meaning of an undramatic mode, when she discusses works she characterizes as "dedramatized", which "open up different ways to detach from the cruel optimism of a civil society politics, if not from the desire for the political as such. The question is whether and how that loss might make an opening" (*Cruel Optimism* 232-233). Not yet knowing where the undramatic mode will take us in terms of a potential alternative political reality, it seems as if experimenting with opening up the genre conventions of the dramatic work is worth doing just because it may have a relieving effect. That is, it may relieve us of the depressive mode the exhausted fantasies of civil society politics, 'old-school' politics, left us with, or even simply relieve us temporarily of whatever it is that is bugging us, be it a political depression, or some other form of illness. Berlant suggests that there might be some merit in this relief;

like the practice of "self-medication" Berlant gives as an example (*Cruel Optimism* 115), it may provide a form of therapy for the suffering, the 'slow death,' that is experienced in the environment of governmentality. In light of these thoughts on therapy and relief, on "medication," figurative and literal, the question arises what effect is produced through the scene at the end of *The Perjured City* in which the play's ending is self-consciously and explicitly re-written, even if only to cater to the depressed feeling with which the troupe of actors that make up *Theatre du Soleil* were left after 'running through' the first ending in the final stages of rehearsals, and because of the awareness this produced in Cixous of the fact that victims of the Contaminated Blood Affair would be in the audience once the play went into the theatres. The next and final section deals with this sense of relief the play appears to have intended to generate.

5. *The curative epilogue: Postdramatic care for the victims of the Contaminated Blood Affair*

When he first addressed biopower in the last session of *Society Must Be Defended*, Foucault reflected on the relation of this power to the phenomenon of death in a somewhat curious passage:

> Now that power is decreasingly the power of the right to take life, and increasingly the right to make live, or once power begins to intervene mainly at this level in order to improve life by eliminating accidents, the random element, and deficiencies, death becomes, insofar as it is the end of life, the term, the limit, or the end of power too. Death is outside the power relationship. Death is beyond the reach of power, and power has a grip on it only in general, overall, or statistical terms. […] In the right of sovereignty, death was the moment of the most obvious and most spectacular manifestation of the absolute power of the sovereign; death now becomes, in contrast, the moment when the individual escapes all power, falls back on himself and retreats, so to speak, into his own privacy. Power no longer recognizes death. Power literally ignores death (248).

In death, it seems, we can be free from the increasingly pervasive form of power Foucault has analyzed in terms of biopower and, later, in terms of governmentality. The curiosity of the passage lies in the strange feeling it leaves the reader with of the positive potential ascribed to the state that Foucault suggests lies outside of power, death, since it is also the state that lies

outside of life, and hence it is not a state any of us living can potentially inhabit. This does not mean that we should long for death or that we should take the passage as an ironic statement of the impossibility to escape biopower. Rather, we should take it as proposing that the question of escape or opposition is irrelevant in relation to biopower, so that we should look for modes of engaging with it on its own terms or following its logic, not positioning ourselves in terms of inside/outside, which is the juridical logic, but, perhaps, as Berlant suggests, by approaching its logic 'laterally' (119 and 262). The question Berlant raises at the end of her book, however, is how to find the energy to sustain the commitment needed for putting this approach into practice, given the exhausting effect of stuckness or impasse. The work of taking measure of the waning fantasy of the good life, Berlant proposes, "*requires* fantasy" (263, italics in original), or to put it in terms of the book project: it takes optimism to deal with the cruelty of optimism. Significantly, the term Berlant chooses in the conclusion to her book to bring this message across points towards a psychic mode that has also taken the form of an artistic *genre*: fantasy. That genre also plays its part in the conclusion of Cixous' *The Perjured City*.

Indeed, in the context of Foucault's reflections on the relation of death and biopower, it is of interest that Cixous' setting for the second ending of the play is the afterlife, a place far away from the Earth – "*elsewhere* and *after* death," Cixous comments ('Enter the Theatre' 34). In that elsewhere-place the play's characters, who died in the flood, finally find some peace – the Mother especially, as she is reunited there with her deceased sons – and the characters address the audience in the theatre. This peaceful afterlife in which the characters are not completely dead, this creation of a space and time away from life, from the Earth, but still in contact with it, offers a kind of surrealistic fantasy – the kind that may support and sustain the "commitment to the work of undoing a world while making one," as Berlant puts it (263).

In the interview with Eric Prenowitz that accompanies the English translation of the play, Cixous comments that she had been aware of the state that the victims were in, and of the probability that they would be in the audience at its performance. She writes:

> [T]he big question was how to transpose a story that was in the newspaper headlines for a year, and a tragedy from which the victims were *in the process of dying*. How could one take tragedies that were not yet finished and turn them into theatre, make them visible? Tragedies that were before our eyes, under our nose, that did not take place in Asia? And while I was writing *The Perjured City* I thought to myself that in

> the audience there would be haemophiliacs who were dying. The consciousness of the *immediacy* and the *proximity* of this tragedy did not leave me for a second. ('On Theatre' 18, first italics in the original, last italics mine)

It seems at first as though Cixous' main challenge was how to find a way to express the suffering of the victims that would be present in the audience, to translate the story into a work of drama; i.e. a question of dramatization or representation, of medial 'transposition', as she puts it – not of the criminal acts, as in Vismann's account of the theatricality of the trial, but of the suffering that the Affair led to. And yet Cixous' comment makes apparent that her question is not completely one of representation, mediation, or it is not only. Cixous points out that her play related rather directly to the Affair's victims as they would be in the audience, in "proximity," even contiguous, to the space of the stage on which the play would take place. Expressed in these terms, Cixous' conception of the relation of play to audience appears metonymic rather than metaphoric, as the proximity was not only mental, as a projection during the process of writing, but also physical in that the people who were dying from the Affair would be visiting the play in the theatre, sharing, there, the same space as the actors on stage.

The presence of the haemophiliacs in the audience rendered Cixous' 'problem', as she writes, "immediate", literally 'without medium,' or also 'present' as in distinction from 'representation'. The element of immediacy, the play's relation to the very real process of dying it knew the audience to be going through, changes the work: from a dramatization or medial transposition of the Affair for a general theatre audience – namely the 'public' that consists of French citizens, subjects to the law and participants in democratic politics – the play becomes a gift to a *specific* audience, namely the Affair's victims who would come to the theatre, and a gift that is not so much symbolic (a representation), but that was rather intended to have material, corporeal effects, given that audience's physical state of dying, of being sick. The shock of the actors' rejection of the first ending made Cixous realize that despite the depressing situation of the Affair and the inability to decide on a fitting mode of response, she would nevertheless choose to believe in the positive capacities of theatre as a form of art. The epilogue Cixous next wrote would be the expression of this positive capacity of the theatre; the theatre's ability to "overflow" (*Enter the Theatre* 34), to 'give' in excess, without "taking" or asking in return.[101] And what is 'posited' or 'given' in the play's final scene, the scene after

[101] For Cixous' reflections on such a gift economy, see "The Laugh of the Medusa" 888, and *Readings* 28.

the ending, is intended as a form of pain-relieving medication; a way of relieving the audience from the hopeless inevitability of *their* ending, their death, as a consequence of their having contracted HIV/AIDS.

In the context of this intention to generate a therapeutic effect, it is of relevance that Cixous makes use not of the device of any scene, but of an *epilogue*. In his analysis of the epilogue as a paratextual phenomenon, literary scholar Gérard Genette comments that "[g]iven the postface's location and type of discourse, it can hope to fulfill only a curative, or corrective, function" (*Paratexts* 239). The curative effect or intention Genette ascribes to the epilogue is related to what he has written about the prologue, namely that it often is the expression of the writer's intention to shape the reader's reading of the text. The writer, afraid that his point will not come across, uses the prologue to stress his point. Should the reader nevertheless have strayed from the 'right', that is, intended, reading of the text, the epilogue may serve to straighten him back out after concluding the reading. 'Curative', then, is meant in a figurative way. Yet when Mike Cadden picks up on Genette's analysis of the epilogue in his article on the use of this paratextual device in children's fiction, he approaches 'curative' in a literal way, or at least, in so far as providing comfort can be considered to be a form of 'curing' (354).

In his essay entitled "All is Well," Cadden contends that in children's fiction, the epilogue often serves to soothe a young reader at the conclusion of a scary text. Cadden's argument about the epilogue hinges on the fact that his objects of study – works of children's fiction like the Harry Potter saga and *Ella Enchanted* – are written for a specific audience. The writer of children's fiction, often an adult themselves, has his or her young audience in mind while writing, as well as that audience's assumed need for "reassurance" (344). Children's fiction, Cadden seems to point out, is about the task adults are culturally assigned to provide their children with a sense of comfort about the world in which they are growing up, with the sense that 'all shall end well'. Indeed, the epilogue in children's fantasy fiction indicates, according to Cadden, "the adult's desire that the reader be comforted at all literary costs" (355), and this is what an adult or a parent's responsibility to *care* appears to consist in, at least in relation to children's reading practices.

However, providing a sense of comfort may also be the very defining function of 'fantasy' as a mechanism, as Berlant suggests at the conclusion of her book. The relationship of providing comfort emphasizes the dimension of literature that is concerned with its corporeal effect on a reader, its affective capacity. Drama, too, has such an affective capacity, and as I have discussed in chapter two, Lehmann argues, in *Postdramatic Theatre*, that it is

this capacity that was structurally downplayed in the centuries dominated by what he calls 'dramatic theatre', and foregrounded in postdramatic theatre practices, which tended to emphasize the corporeality of the extra-diegetic setting in which the performance of a work of drama takes place. In *Postdramatic Theatre*, Lehmann sketches theatrical practices that developed in the course of the twentieth century as becoming increasingly aware of this dimension and starting to play with it, also making audiences aware of their "contiguity" to the performance, which implies a "relationship of metonymy," instead of drawing them into the suspension of disbelief necessary to be captured by a work of drama, a "fictive world" for which the scenic space "symbolically" stands in (151). Cixous' *The Perjured City* takes this aspect of postdramatic theatre one step further and literalizes it, if we take it as a work that is not only aware of the reality of the theatre, and the corporeal presence of the audience, but also seeks to intervene at that level in a non-metaphorical way, by providing a sense of comfort.

I read the ending of the play, the 'epilogic' afterlife, as presenting a different mode of response to the Affair than the mode of the trial and the mode of political drama. If the trial is geared at solving the issue by translating it into legal terms and producing a judgment and consequent punishment, and political drama in stirring up resistance by translating the issue into the terms of an opposition between a master and a slave, between power and the oppressed, and seeking to undermine that opposition, both are therapeutic in Vismann's sense, in that they seek symbolization and solution. Cixous' writing practice, by contrast, seems instead to express a sensitivity to the fact that the sick and dying will not find relief in symbolic resolutions, and an awareness of the corporeal effects of what she makes (although coupled with an awareness that those effects may always be somewhat beyond one's control). Through her theatrical production, she tries to *give* 'something' at this level, something to comfort and something to provide relief for the people present in the audience watching the play, people suffering from an illness for which there is no cure.

In ending, it becomes clear that the play is not about getting at the 'truth' of the Affair, correctly representing the condition of the victims, or finding a solution for their predicament. The audience consisted not of "active consciousnesses" – Berlant's name for one artist's desired state of being; an artist who has documented his day to day routines in dealing with his AIDS-condition (*Cruel Optimism* 62) – who are fit to participate in processes of accusation and opposition. The audience Cixous thinks about consisted of the sick, people in the 'business' of tending to their physical needs on a daily basis, probably in pain, exhausted, and captured by routines of taking medication, naps, etc. In her article on the Affair, Kramer

describes a patient who visited the trial, was seen there to be taking pills, his shouts gradually turning into "whispers" as the case progressed, and his condition weakened – an increasingly 'inactive consciousness' to play on Berlant's terms. What the play gives is in no sense a 'cure', as in a 'solution', but rather 'care' in the form of pain-relief, albeit only temporary. Its therapeutic goals are humble, especially in comparison with the therapeutic goals of the trial (see Vismann above) or of political theatre. Perhaps this makes the play a-political, but this sphere of being 'outside politics' might, given Berlant's discussion of contemporary politics and the contemporary political, be worth something that might nevertheless harbor some promise of "a better good life," as Berlant puts it (*Cruel Optimism* 263). Seeking to administer 'care,' the play does not escape the logic of governmentality at all, but instead approaches it laterally, in relation to itself, as a kind of counter practice that imitates what it counters, that seeks to "improve life," as Foucault put it, in some way, for those whose lives had been 'risked' by the State.

If the artworks considered in the previous chapter show the desire for re-dramatization resulting from a postdramatic trial, the artwork in this chapter concerns the limits of the potential of that desire, namely exhaustion and stuckness, and the strategy for dealing with the 'beyond' of those limits: fantasy, especially as it concerns the ending. The mode of fantasy as it appears in the ending of Cixous' play is not that of drama, in that it does not imitate or confirm the current political reality, and neither is it that of postdrama, in that it does not seek to produce an undermining event or deal with an event that undermined that political reality *per se*. After the play itself has struggled with the potentials of the forms of drama and postdrama, the fantasy produced in the play's second ending instead appears as a third form in relation to the dichotomy of dramatic forms conceptualized by Lehmann in the theatre theory that has provided this dissertation with its main frame, perhaps one that we may call 'undramatic,' with Berlant. To a world, a people, that can no longer access the mechanisms of dramatization and for which the traumatizing, or traumatic, and thus evental logic of postdrama does not have anything to offer either, this 'undramatic theatre' provides comfort, projects the idea that all may end well, even if it may end well only after the end has already come, so as to make living in the present perhaps slightly more bearable. In Cixous' play, tellingly, the fantasized ending not only concerned the ending of the play after the drama had already ended, but also the ending that all biological beings must deal with and live towards, the ending that defines and escapes the logic of a politics focused on 'life,' that is, the absolute end of life: death. It is not for those killed, the 'victims' of sovereignty, but for those facing death, slowly dying, to put it in Berlant's terms, i.e. the 'victims' of biopower, the

power that determines our time, that this artwork may harbor such a ‘gift’ – the fantasy that all will be well after the end – without it being completely clear what that gift will bring.

Conclusion

I started the research project that led to this dissertation with a study of Aeschylus' *Oresteian Trilogy*, which I understood as a myth of origin of the criminal trial as a public event. In the *Oresteia*, three tragedies tell the history of the House of Atreus. In the first part, entitled 'Agamemnon,' Clytemnestra kills her husband, Agamemnon, king of Mycenae, and commander of the Greek armed forces, upon his return to Argos, in an act of vengeance. As the myth famously has it, Agamemnon had sacrificed their daughter, Iphigenia, to favor the goddess Artemis after he had insulted her and she turned the winds against his mission to sail to Troy. In 'The Choephori,' the second part, Clytemnestra's and Agamemnon's son Orestes returns to Argos from exile to avenge his father's death by killing his mother, Clytemnestra. The third part, 'The Eumenides,' deals with the impossible situation that this series of vengeful murders has created. Orestes has killed Clytemnestra, because the god Apollo warned him that his father's Furies, goddesses that are traditionally understood to administer justice through vengeance, would chase him. However, after he has killed his mother, he finds himself chased by his mother's Furies. At the start of 'The Eumenides,' Orestes flees to Delphi to seek council from Apollo, who tells him to travel to Athens and to pray at the temple of Athena. Upon Orestes' arrival, and that of the Furies who are chasing him, Athena installs a court at her temple, on the Areopagus, the mountain located just outside of Athens, to deal with the situation. A trial is held, presided over by a jury consisting of twelve Athenian citizens, and when the jury is split equally over Orestes' case, Athena casts a final vote to acquit him.

As scholars have pointed out, these mythical developments in Aeschylus' *Oresteia* pay tribute to historical developments that occurred in the city of Athens in the sixth century BCE, as that century saw the establishment of political and legal institutions of a democratic nature, the institutionalization of religion, and the founding of a tradition of public theatre festivals.[102] Aeschylus' trilogy is commonly read as presenting the succession of the system of justice that works in terms of vengeance, in a pre-legal, or at least pre-institutional sphere, by a system that works on the basis of a court of law that holds public trials.[103] Similarly, it has been read as the representation of a shift in Athens' religious beliefs, as an account of the victory of a new generation of individualized gods (amongst which Zeus, Apollo, and

[102] See Arnason, Raaflaub and Wagner; Vernant and Vidal-Naquet; and Vellacott in Aeschylus, amongst many others.
[103] See Vellacott in Aeschylus 15, specifically.

Athena), called the 'Olympians,' over an older generation of gods that figured more as natural forces (such as, amongst others, the Furies), the so-called 'chthonian' gods (from the Greek *chthon*, which means 'the earth').[104] Fifth century BCE Athens also saw the establishment of a specific artistic sphere, with the onset of theatre festivals at which works by the great tragic poets were performed, and competitively so: they comprised popular voting, a ritual of judgment. These spheres of politics, law, religion and the theatre, all public, theatrical institutions, are often discussed in relation to one another by cultural historians reflecting on this historical period and by literary scholars reflecting on the texts produced therein.[105]

My interest in the *Oresteia* was motivated especially by its relation to the co-constitution of two of these spheres, namely law and theatre, especially in the form of the dramatized trial in the trilogy's third part. One aspect of that trial appeared especially significant for an understanding of the implications of the theatrical nature of the newly established public court: the appearance, on stage, of the Furies. The Furies play their part in the myth throughout the whole trilogy, but up until the third part, 'The Eumenides,' they are present only implicitly, i.e. not as characters in the drama, but as the proper name for a particular kind of force that had determined the tragedy's developments. They are referred to, for example, in 'Agamemnon,' when the chorus tells of the Trojan war and sings that the gods had sent a "swift Fury to pursue // Marauding guilt with vengeance due" (Aeschylus 43). The seer Cassandra, who Agamemnon took back as a concubine, also mentions the Furies when she bears witness to Clytemnestra's act of killing Agamemnon, which takes place off-stage, calling the Furies a "bloody ravening pack" (Aeschylus 81). The Furies often figure by means of such metaphors: they are portrayed as blood-searching "hounds" (Aeschylus 142), as a swarm (Aeschylus 142), as diseases such as a "canker" (Aeschylus 97) or "plague" (Aeschylus 97), as a "curse" (Aeschylus 97), and as a trap (Aeschylus 98), hunting nets (Aeschylus 90), mesh (Aeschylus 55), and woven cloth (Aeschylus 97), as, for example, in the references to Clytemnestra's vengeful act of killing Agamemnon. When towards the end of the second part of the trilogy, 'The Choephori,' Orestes swears he sees the Furies coming for him, they are imagined as a group of women whose hair was made of venomous snakes (Aeschylus 142).

If this already imagines them to take a more 'human' form, it is only in the third part that the Furies themselves appear on stage, where they would have been embodied by actors

[104] See Vellacott in Aeschylus 16, specifically.
[105] See Vernant and Vidal-Naquet for their theory of "tragic ambiguity" (18), a consideration of the manifold ways in which the 'old' world of myth that preceded the onset of tragic drama infested the newly established order.

wearing masks, i.e. in which they first appeared as *personae* of sorts. They will have had to take this new form, I propose, in order to appear in the court that is established in 'The Eumenides' by Athena, so that they could take part in the formal procedure that unfolds during the court's first trial, to plead Clytemnestra's case, or to publicly charge Orestes for having murdered her. The change from a metaphorical presence, in which they stood for acts of vengeance ordained by fate, to this more or less impersonated state also enables Athena to negotiate with the Furies after the trial of Orestes has come to a verdict, and to convince them to disappear into subterranean caverns in which they are endowed with the 'privilege' to turn their powers to the good of the city of Athens; i.e. to subject them to the order of the city, or, perhaps, as Cixous claims, to lock them up. This development in the Oresteian drama thus made the new institutions – the new order of the Olympian gods, the city as a political order, the public criminal court, and the theatre as their formal support – appear as having the power to constrain a certain kind of force that had been named 'Fury,' or 'the Furies,' namely the force of fate, of disease, of the animal-esque and instinctive bloodlust and vengeful chaos that had had such a disruptive effect in the history of the House of Atreus. Indeed, it made the theatrical institutions, and their logic of representation, appear as institutions with the power to establish an order, the power to govern and control, and that power, in turn, as the epitome of 'humanity'.

And yet, 'The Eumenides' does not fully 'impersonate' the Furies, or capture them in the form of persons. The goddesses of vengeful justice appear not as characters as such, like Orestes, Clytemnestra's ghost, and Apollo, for example, who are individuals with their own particular intentions; they appear on stage in the form of the *chorus*, a character, but one made up of a multiplicity of bodies. During the trial, the Furies speak, or, perhaps, are made to speak in a fashion similar to that of Orestes, Apollo, and Athena, representing their case through common discourse. In the margins of the trial scene, however, the Furies' perform in rhythmic and rhyming song, i.e. in the lyrical mode, rather than the dramatic. As the chorus, they would have danced also, and even possibly been placed on a different part of the performance space then that on which the actors who played Orestes, Athena and Apollo appeared.[106] As I discussed in Chapter three, Hans-Thies Lehmann considers the chorus a "predramatic" figure, which, because of its emphasis on the voice and the body in the form of song and dance, emphasized the corporeality of the theatre as a space and the physical presence of the audience in that space. This is in accordance with the Furies' chthonic nature;

[106] See Kitto, "The Greek Chorus" 1. On a different interpretation of the distinction between tragic characters and the chorus, see Vernant and Vidal-Naquet 24.

as ‘earthly’ gods, they embody the materiality of the earth, of ground and soil, a materiality that resonates in their lyrical nature, the emphasis their performance would have placed on rhythm and rhyme, that is, at least, before the start of the trial and after its ending. Such a material, corporeal presence contrasts sharply, as Lehmann argues in *Tragedy and Dramatic Theatre*, with the representational logic of drama and its reliance on text. The Furies’ ambiguous appearance in the trilogy’s final part, I propose, raises the question if Athena has managed to completely suppress the Furies’ force, or whether that force will not leak out of the caverns outside of the city in ways that remain not fully graspable to the city and its ways of organizing and ordering society. In other words, their appearance raises the question whether the representational, dramatic form of that society will not continue to find itself plagued by the disturbing forces that have been named ‘Fury’.

The analysis of the Oresteian trilogy I conducted at the beginning of the research project did not make it into the dissertation as such, but somehow the figure of the Furies kept reappearing throughout the studies I conducted of the cases that make up the dissertation’s chapters, albeit with the exception of the first chapter, “Reinventing ‘Lawness’,” in which I analyzed the courthouse architecture of the newly built permanent premises for the International Criminal Court in The Hague as an artistic intervention in the traditional dramatic representation of legal power as a sovereign power. But given the understanding I have developed thus far of the Furies as a figure that contrasts with, disturbs, and perhaps defies the logic of drama, it is not hard to project their disruptive force onto the contrast I discuss in that chapter between the dramatic form of classical, sovereign courthouse architecture and the logic of garden-cultivation I read in relation to that, and the more Furies-like wilderness of the ICC’s multilateral constitution, which is reflected in the hanging garden that defines the design.

In the second chapter, “A Spectral Silence in the City of Peace and Justice,” in which I analyzed the Yi Jun Peace Museum in the context of the Hague Peace Conferences that were organized around the turn of the twentieth century, as the starting point of a global form of government and international law, the figure appeared in the guise of a metaphor for the traumatic violence of colonialism and the loss of sovereignty it entails in the print I encountered on the museum’s top floor, entitled “The Fury of Antwerp.” In this chapter, ‘Fury’ thus appears as a metaphor for the undermining effects of trauma. Given that I take the print, which presents an engraving of the 1576 ‘Sack of Antwerp,’ as a moment in which the museum appeals to the visitor as an embodied, potentially vulnerable, being, ‘Fury’ here also opens the possibility of an exchange between representatives of different states through an

experience of their shared corporeality, while at the same time channeling an experience of the vulnerability of states through that experience as well.

In the third chapter, "A Legal Monstrosity," the figure appeared during my research into the nature of computational media, though it plays a less explicit role in the text. In two different essays, "Networks," and "Love of the Middle," media scholar Alexander Galloway presents the figure of the Furies as a way to conceptualize the form of media such as "networks," "systems," "assemblages," "swarms" and "clouds" (see "Love of the Middle" 29, 46, and 58). Galloway argues that these media are categorically distinct from and structurally frustrate the mechanisms of representation, visual and verbal, which Galloway approaches through the other godly figures of Hermes and Iris, respectively ("Networks" 290-291). As such, the figure of the Furies allows Galloway to present an argument similar to the one I make in Chapter three, when I consider computational media, i.e. numbers and calculations, as presenting a form that cannot be dramatized, i.e. represented on stage in verbal and visual ways. The introduction of these media as evidence in trials, as in the trial of Lucia de Berk that I study in that chapter, I argued in that chapter, thus bore a disturbing effect on the trial's organization, leading, in that case, to a highly contradictory and seemingly unsolvable verdict, and to cultural productions that expressed the desire to re-dramatize the De Berk case.

The figure made its most prominent and explicit reappearance in my fourth chapter, "Fury Exhausted," in which the Furies appear as a title figure and main protagonist in Hélène Cixous' play, *The Perjured City: or, the Reawakening of the Furies*; the play that is the subject of analysis for that chapter. In that play, written in response to the French 'Contaminated Blood Affair,' Cixous introduces the Furies on stage as a character consisting of three women who are, as the title of the play relates, reawakened from the slumbers to which Athena put them, so that they may offer their force in resistance to the kind of political and legal order that was established under Athena's authority, and which, according to Cixous, was still ruling France at the time of the Affair: a patriarchy. But because of the ambiguous spirits the play presents and the dominant moods of stuck-ness, impasse, and exhaustion, the question arises in the fourth chapter whether the disruptive, undermining potential of the Furies has been lost with the onset of biopolitical modernity and its regime of governmentality, forms of power that, according to the French philosopher Michel Foucault are incommensurable with sovereign power. The Furies here flag the impossibility of tackling suffering brought on by the post-sovereign, undramatic nature of biopolitical governmentality in legal, political, and artistic forms that rely on the logic of drama.

In the course of my search for legal events that had appeared, to me, as challenges to the dramatic form legal theatre has traditionally taken, it appeared as though the figure of the Furies kept reappearing to channel the crucial issues and questions for this dissertation. First in the way in which Cixous' had meant to make them reappear in her play, *The Perjured City*, namely as the possibility or promise of a disruptive, order-undermining force, a force of protest or resistance, or the sign of a different kind of order than the representational and subjugating order of drama. In the chapter on the ICC, for example, the Furies would have raised the question what kind of architectural form a non- or anti-sovereign legal order could take. In the second chapter, Fury raised the issue of trauma's order-undermining potential, and the question if it were possible to establish relations, e.g. between states and their representatives, on the basis of a shared experience of vulnerability. In the third chapter, the Furies raise the issue of the disruptive effect of computational media on the representational logic of the trial, but in this chapter a different question arises: if society becomes infested with disruption too much, will people manage to find ways of re-dramatizing the disruption, bringing it on stage in such a way that sense can be made of it once again and order reinstalled? In the fourth chapter, in which the Furies were reawakened by Cixous' play, *The Perjured City*, their reappearance ends up raising the issue of the exhaustion of all oppositional efforts in light of the logic of biopolitical modernity, and this raises the question what kind of politics would come after those that take a dramatic form.

At the very end of Cixous' play, which comes after its first, tragic ending, the Furies collaborate with the other characters, and the playwright Aeschylus, to project a fantasy of a happy afterlife. As such, they help point towards what I propose in the conclusion to that chapter, namely that the corporeal nature of theatre, distinct from the practices of dramatization to which the theatre also gives space, bears some hopeful potential for situations that frustrate the representational logic of drama. If a situation cannot be cured through legal or political mechanisms of representation, of dramatization, art can still contribute to some form of 'care,' and can do so through the powerful mechanism of fantasy and its potential corporeal effects of comforting and consoling the actors and audience that are gathered together in the theatre as a physical space. Not quite of the order of postdrama, this potential of theatre can, instead, be conceptualized as 'undramatic,' which is the term Lauren Berlant uses to qualify the non-theatricality of life in biopolitical times. Although it remains uncertain what this 'care' will bring to the people it nourishes, there is nevertheless something hopeful about it, something optimistic. It appears as though, if situations cannot be solved dramatically, the theatre can still provide a kind of 'holding environment,' to put it in the

terms of British psychoanalyst and pediatrician Donald Winnicott, who discussed how social institutions may present a "psychological" version of the "physical" care a mother gives to her child in the form of holding them (Winnicott 193-194).

In light of the highly uncertain and disjointed times in which I finish this dissertation and write its final words, however, new questions are arising concerning the potential of different, dramatic, postdramatic, and undramatic forms of theatre to deal with past and ongoing atrocities and suffering, especially in light of the logic of biopolitical modernity. The situation that is being called the 'Corona crisis,' and which various scholars have already characterized as 'biopolitical',[107] is one in which it has been difficult to tell whether and to what extent the government's care for the population's health, faced as it is with a viral, infectious disease, is caught up with political and economic interests on other levels. The measures that have been taken in light of the crisis – a 'lock-down' of the public sphere in general, 'social distancing' as the control of relations between individuals, a mandatory masking of the face in public spaces, (not to mention yet the compulsory vaccination that is already being announced by different companies and governments as future policy, for people to obtain access to cultural events, public transportation, and the work floor, for example) – and which have come about in between state laws and corporate regulations, all frustrate the mechanisms of dramatization that allow groups of people to come together and deal with past atrocities and ongoing suffering by the representational means of a public staging.

Indeed, the very ritual of the funeral has been subjected to limitations on the amount of visitors that can gather to share their grief. Other kinds of meetings and ceremonies are being conducted virtually where they can be, with participation mediated by screens and disturbed by the 'lag' that typifies networked communication. The university has moved teaching 'online,' and the defense of this research is unlikely to be taking place 'live,' as we now call these increasingly separate realms. Political demonstrations have been canceled for the sake of the supposed health-risks they pose. Theatres and other cultural institutions like cinemas and museums have been closed down. Politics is still practiced and culture still experienced, but not in common, not in the way in which their rituals may constitute 'magic circles' in which people gather together, as Schechner wrote in his *Performance Theory*, with reference to Huizinga's *Homo Ludens*, so that a sense of social solidarity may be produced. Instead, politics appears to have moved into the increasingly polarized virtual sphere of social

[107] Agamben, "The Invention of an Epidemic," and Van den Berge, "Biopolitics and the Coronavirus: in Defence of Giorgio Agamben". For critiques of Agamben's take on the Corona crisis, see Nancy, and Žižek, "Monitor and Punish? Yes, Please!".

media, from which more and more often dissenting and 'unlikeable' opinions are being censored, and culture appears to increasingly take the form of the algorithm-based, never-ending stream of Netflix productions, to be consumed at home, in isolation.

In the Netherlands, the Corona regulations are made to fluctuate in relation to the numbers of infections that are presented daily to the population and which have come to determine the smallest details of everyday life, as for example the amount of people one can take a walk with outside (which changed from two to three in the course of writing this conclusion) or the amount of people one may invite for Christmas dinner (which is still under discussion as I write this). From the very outset of the crisis, media have confronted the public daily with statistics and probability estimations; indeed, the logic of 'risk' and its prevention and management defines the entire situation. It is telling, then, that for every decision taken, members of government point to the experts at the national institute for public health, who provide them with advice. When confronted with this attribution of responsibility of sorts, those experts point back, as they indicate that they are not the ones making policy decisions. The mechanism by means of which government relies on expert opinion and 'advice' thus also organizes a deflection of responsibility that raises the question if anyone can ever be held accountable in the future for decisions made in the crisis and for their consequences. And those consequences, in turn, will be incalculable: people are not only dying from COVID-19, which the measures seek to prevent, but also from not getting the medical care they need for non-COVID-related illnesses of which the treatment has been scaled down, from dire financial straits, and perhaps even from loneliness. This is not even to raise the question of what suffering may ensue in the future from the economic consequences of the measures that have been taken and the national and global financial debts that have been taken on for them.

Besides, there is much disagreement between experts on the nature of the disease and on the effectivity of the measures that are being taken, as in accordance with the logic of science I discussed in Chapter Three, which causes the necessary confusion and raises questions. Pointing this out, however, or raising such questions accounts for 'misinformation' nowadays and is subject to censorship. All in all, the crisis appears, to me, to push against the limits of what can be dramatized in some of the different ways – trauma, computational media, governmentality – that I have discussed in this dissertation, and especially the latter two. Surely, there will be traumatic experiences because of the deaths and suffering to which the crisis and the measures lead, but I would rather argue, following the distinction Berlant makes between the 'evental' and 'exceptional' nature of trauma and the 'environmental' nature of biopolitical governmentality, which I discussed in Chapter four, that the crisis

presents an instance of the latter more than the former.[108] What seems to pose crucial challenges to the logic of drama already, following my arguments in Chapter Three and Chapter Four, are the statistical and probabilistic accounts through which the pandemic is presented, the computational media of numbers, graphs, and calculations that infest the discourses on the matter, and the 'population' and risk-management logic that are characteristic of biopolitical governmentality, which make it almost impossible for individuals to decide how to relate to what is happening.

With prevailing uncertainty about the amount of 'waves' of infections that are still to come, and thus about the duration, even the potential normalization, of the crisis, the question that arises in the midst of it all, for me, is whether, besides running into the limits of dramatization, the imposed closure of the public sphere and control of intersubjective relations also signal the limits of theatre as a social mechanism in general, i.e. including performances of a post- and undramatic kind. If, as I argued, theatre could still allow for corporeal modes of care that allow human beings to find comfort and consolation together when dramatic representation has become impossible, i.e. if it can provide the kind of 'care' I read into the epilogue of Cixous' play in Chapter Four, this would require physical proximity of the kind that is now being presented and experienced as putting people at risk. If we are truly faced with a situation that cannot be dramatized *and* cannot be dealt with in the theatre either, in which people cannot gather to collectively represent, nor to share in a corporeal experience, i.e. in a potential 'holding environment,' I am left to wonder, at the end of this dissertation, as many must be like me, whither this will lead. I can only hope that people will not, over the time this crisis is going to take, unlearn what vast potential lies in the simplest, most therapeutic, most human of rituals for difficult times: gathering together and 'holding' one another in making sense of this world or fantasizing about a better one to come. If we do not give up on it, this, it seems to me, is one way in which theatre may provide some consolation in the present and some hope for the future.

[108] Agamben qualifies this crisis as a 'state of exception,' which is the paradoxical formula he uses for the way in which the emergency situation has become the new 'normal' in modern society ("The Invention of an Epidemic"). See also Agamben, *State of Exception*.

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Summary

My dissertation starts from the premise that the law consists in a fundamental relation with theatre, indeed, is fundamentally theatrical, and should be studied as such. The relationship between law and theatre has been pointed out by many scholars with different backgrounds, such as more humanities-oriented legal scholars, as well as scholars from fields like art history, comparative literature, and political theory. And established scholarship on that relationship is mostly in agreement that law is theatrical in ways that are fundamental for it, structural to its logic of representation, and crucial to the perception of its legitimacy.

In recent years, however, scholars in the fields of law and the humanities have been taking note of a crisis of legitimacy that confronts different courts and legal institutions. Scholars and citizens alike are concerned about the law and the way in which it is practiced, about the influence of politics on judicial decision-making, for example, or about the effect media representation has on the public perception of law as an institution. One of the main tenets of this dissertation is that that legitimacy crisis needs to be understood in relation to the different ways in which contemporary society is faced with challenges to the fundamental theatrical structure of its legal institutions. In processes and interventions that are sometimes intentional and sometimes unconscious, that theatrical structure appears to be changing under the pressure of those challenges. Indeed, the legitimacy crisis that scholars sense law is confronted with becomes apparent in the theatrical structure of legal events and institutions in ways that challenge a traditional notion of theatre.

In the field of theatre studies, scholars have been taking note of certain structural shifts in the forms of theatre production, as a result of which its traditional forms are increasingly being reinvented. One of the most influential accounts of these shifts has been presented by theatre scholar Hans-Thies Lehmann, who analyzed a general breach with the traditional dramatic form of theatre productions in the second half of the twentieth century in his book, *Postdramatic Theatre*. He argues that these shifts have occurred because of certain politico-historical changes he considers in the context of cultural theories of postmodernism. In this dissertation, I take up Lehmann's understanding of the shift from dramatic theatre to what he calls "postdramatic theatre" as a heuristic device for the study of theatricality in general, i.e. not only of theatre productions or artistic performances in the strict sense. This allows me to

translate the logic of the forms Lehmann contrasts in the terms of "dramatic" and "postdramatic" theatre to an analysis of legal events and institutions to ask the question what new theatrical forms are being presented or becoming apparent on the legal stage.

Indeed, if the relation between theatre and drama that had always been taken for granted, as if it were "natural," was challenged in the postmodern era, as a result of specific politico-historical changes Lehmann points to in his book, I propose in this dissertation that those same politico-historical changes have made their marks on law. The question that arises is how the politico-historical changes Lehmann traces as having instigated the development towards postdramatic theatre in the field of theatre practice, take their specific form in relation to law's theatricality. My dissertation seeks not only to consider law's theatricality, consequently, but seeks to consider it as something that is currently and increasingly confronted with postdramatic interventions that lay bare the fault lines of the traditional, dramatic legal theatre.

I study four legal events in this dissertation – two cases that arise in the context of the development of new legal institutions and two trials that challenge existing ones – in which the fault lines of traditional, dramatic legal theatre become visible in four distinct ways that relate to the theatrical aspects of space, embodiment, media, and genre. These four challenges make up for the dissertation's chapters. They comprise the different ways, though in no way exhaustive, in which I ask the question: is the legal theatre, in today's world, increasingly confronted with a postdramatic logic that challenges and undermines its constitutive forms? In each of the chapters the analysis of these trials and legal institutions is combined with a reading of a cultural text that responds to the trials – architectural design, a museum display, a film and two theatrical plays. Each of these texts, supplements to the legal events, I argue, nevertheless point to some of the blindspots of the trials, or questions that are unwittingly posed by them. The dissertation, as such, is an exercise in reading law 'with' cultural texts, in which the cultural texts are not mere representations of law but allow one to investigate a dimension of law that would otherwise be overlooked.

Chapter one considers the architectural design of the new permanent premises for the International Criminal Court in The Hague. Courthouse architecture traditionally portrays the signs and symbols of sovereign power by tapping into the spatial conventions of dramatic theatre. However, as an institution, the ICC actively seeks to resist the logic of sovereignty that conventionally underpins legal institutions. The Court was established on the basis of a

multilateral treaty, the Rome Statute, and derives its jurisdiction from states' free and willing participation in that treaty. Iconographically, the ICC has translated the openness of its constitution in a courthouse design that features, as one of its main visual elements, a vertical garden that clads the ICC's main building, the Court Tower, in which were to grow seedlings from each of the institution's member states. In chapter one, this thematization of the garden provokes a reflection on the relation between the garden as a *topos* that traditionally supplements buildings that represent power, i.e. on the relation between gardening, the creation of order in nature through cultivation, and sovereign power, which I characterize, in the chapter, as a power that is dramatic in form. Yet because of the specific form of the ICC's hanging garden – the plants do not establish their roots in the soil, but are grown in planter pots that can be removed – this element of the ICC's courthouse design presents an intervention in that relation, between the garden as *topos* and dramatic, sovereign power, to present a symbol for the possibility and promise of a more processual, democratic, and openly vulnerable legal constitution.

Chapter two continues to reflect on the international legal order but raises questions about the conditions under which an international multilateral agreement can be formulated. States can only participate if they are recognized by the international order as sovereign states to begin with, as this is what grants any political formation *international personhood*, a category I analyze in the terms of dramatic theatre. The chapter considers a museum that is located in The Hague, the Yi Jun Peace Museum, that pays tribute to a Korean diplomat, Yi Jun, who died while trying to obtain access to the Second Hague Peace Conference in 1907, after the states participating in that conference had decided to recognize Japan, who had recently colonized Korea, as Korea's legitimate representation at the negotiation table. On the one hand, the Yi Jun Peace Museum functions as a diplomatic endeavor and resembles an embassy in the way that it seeks to represent the sovereign nationhood of Korea. It does so to correct the historical misrecognition and to emphasize the importance of Korea's recognition in the present international circumstances, a recognition based on a dramatic form. On the other hand, I take the museum's emphasis on the diplomat's physical existence, on corporeality in general, and on the facticity of its location as a site of trauma, as raising critical questions about that dramatic form of the international order. In its emphasis on corporeality, I argue, the museum introjects an experience of vulnerability into the field of international relations, thus opening up its dramatic structure to a postdramatic sensibility.

Chapter three is concerned with the clash that occurs when the traditional medial forms of

theatre are confronted with a new medium: the computational. The legal theatre has traditionally been conceived as one that is mediated verbally and visually, as in established conceptualizations by Pierre Legendre, Cornelia Vismann, Peter Goodrich and Shoshana Felman I discuss in my dissertation. However, new forms of evidential reasoning are increasingly entering the courts. In chapter three I discuss the infamous infanticide trial of Lucia de Berk, in which probabilistic forms of reasoning played a decisive role, as did the discourses of the experts that were introduced to elucidate the calculations, namely statisticians, toxicologists, and criminal psychiatrists. Both the form of evidential reasoning and the expert discourses disturbed the legal theatre, I propose, and consequently the case led to contradictory outcomes: it was first seen as one of the gravest criminal trials in the history of Dutch criminal law, and later as one of its gravest miscarriages of justice. The accused was first presented with the gravest possible sentence, a combination of imprisonment for life and forced psychiatric treatment, but was later acquitted, not because there was no proof of her guilt, but because no crimes could be established to have been committed at all. It also left the public, the audience, divided in that it is still split over the question whether De Berk was an innocent victim of an elitist, patriarchal legal system, or a cunning perpetrator who has managed to fool us all and 'get away' with her deeds. The case of De Berk seems impossible to solve legally in a way that is final, conclusive; an outcome I attribute to the effect of the medial nature of the probability calculation and of the scientific nature of expert discourse.

If the cases studied in the first two chapters presented postdramatic artistic interventions in the legal sphere, in the case I analyze in chapter three it is the legal sphere itself that appears to have become permeated by postdramatic elements. The chapter thus also presents a shift in the dissertation's perspective on the relation between (post)dramatic theatre and law: if in the first two chapters the forms of postdrama are 'celebrated,' as it were, for their political potential to reimagine restrictive legal institutions, chapter three is sensitive to the impossibility to live in a world that is structurally unhinged and to the cultural strategies such a world elicits to deal with that. In that context, it is relevant that the De Berk trial I discuss in chapter three also led to artistic responses; most importantly a play, *Lucy, Een monsterproces* (Hans van Hechten, 2008; 2018), and a film, *Lucia de B.* (Paula van der Oest, 2014). The play and the film appear to desire to do the opposite from the artworks discussed in the chapters one and two, the work of architecture and the museum exhibition. Rather than unsettle, undermine, and find new forms in response to the restrictions and effects of the form of drama, the play and the film instead intend to pour an undermined, unsettled case back into a

coherent narrative frame, in the form of a dramatic plot. Based on my analyses of the artworks, I propose that when trials *themselves* become postdramatic, art seeks a re-dramatization of the case at hand, seeks to re-establish order and a sense of social solidarity. I start to explore, in chapter three, the implications and potential of this desire. The question that remains, in relation to the De Berk trial, is whether the artworks can redramatize this trial conclusively, given the open, irresolute structure and logic of the postdramatic form that plagued it.

Although chapter four engages with a different problematic, it continues to reflect on this last question: the desire for drama, or re-dramatization, in a society governed by a legal order that appears to have become increasingly permeated by postdramatic elements. In chapter four I reflect on a trial in which it appeared to be impossible to establish anything resembling an 'act,' a fundamental generic aspect of drama as a symbolic form, as it is necessary for the construction of a plot in the theatre, and as it also presents a condition for a trial to come to conclusive judgment. In the case I discuss in chapter four, the French *Affaire du sang contaminé*, the Contaminated Blood Affair, a conglomerate of political, medical and corporate officials allowed the national blood supply to become contaminated with HIV in France, in the early 1980s, because of certain political-economic considerations. As such, they exposed the public, and especially people who relied on transfusions and blood products, like hemophiliac patients, to the risk of contracting AIDS and dying from it. Yet none of these officials' acts could be constructed as having been intent on this result. Consequently, the officials who were brought to trial were not charged with crimes such as poisoning or manslaughter – acts that would have 'done justice' as it were to the fact that lives were lost in the Affair – but with the misdemeanors of 'merchandizing fraud' and 'non-assistance to persons in danger' instead, for which the penalties are relatively mild prison sentences and fines.

In chapter four, with reference to Michel Foucault's concepts of biopower and governmentality and Lauren Berlant's reflections on them, I take the Affair as an exemplary case for ways in which contemporary society is structured by modes of agency that can no longer be understood as dramatic in the sense of originating in the intentions of an individual; instead acting in the contemporary seems increasingly to take the form of a certain passivity that can be understood to be un- or postdramatic. The chapter analyzes a play that was written and produced in response to the Affair, Hélène Cixous' *The Perjured City*, as raising the question whether this fact presents a disturbance not only to the resolutive potential of legal

theatre, but also to the potential and form of political theatre as a mode of response to injustice. The play ends up providing a form of ‘care’ rather than a ‘cure’ or solution for the problems raised by the Affair, but the question remains what this entails, what it means for contemporary society in its desire and ability to deal, by juridico-theatrical means, with the fact that what Lehmann still characterized as the exceptional, eventual nature of postdrama, appears instead to have become the new ‘normal’.

Samenvatting

Dit proefschrift gaat ervan uit dat er een fundamentele relatie is tussen het recht en het theater, of zelfs dat het recht theatraal is van aard en ook zo bestudeerd moet worden. Uiteraard ben ik niet de eerste wetenschapper die wijst op de relatie tussen recht en theatraliteit. Wetenschappers uit verschillende velden, zoals de meer geesteswetenschappelijk-georiënteerde rechtsgeleerden, alsook kunsthistorici, literatuurwetenschappers, en politicologen, gingen mij voor. De heersende doctrine is dat het recht theatraal is in haar fundamenten, in de wijzen waarop juridische vormen van representatie gestructureerd zijn, en dat die theatraliteit cruciaal is voor de perceptie van haar legitimiteit.

Tegelijkertijd wijzen veel wetenschappers in het veld van rechten en geesteswetenschappen er tegenwoordig op dat verschillende hoven en juridische instituties zich geconfronteerd zien met een legitimiteitscrisis. Wetenschappers, maar ook burgers, maken zich zorgen over het recht en de manier waarop die gepraktiseerd wordt, over de invloed van politiek op gerechtelijke besluitvorming, bijvoorbeeld, of over de weerslag die de media hebben op de publieke perceptie van het recht als institutie. Een van de belangrijkste leerstellingen van mijn proefschrift is dat die legitimiteitscrisis begrepen moet worden in relatie tot de theatrale aard van het recht. Daarbij stel ik voor dat de fundamentele theatrale structuur van juridische instituties momenteel op verschillende wijzen uitgedaagd wordt in processen en interventies die soms zo uitdagend bedoeld zijn en soms onbewust dat effect met zich meebrengen. Die processen en interventies hebben, zo beargumenteer ik, een structuur die afwijkt van een traditionele opvatting van theater.

In het veld van theaterwetenschappen hebben wetenschappers in de afgelopen decennia kennisgenomen van bepalende verschuivingen in de praktijk van theaterproductie. Het resultaat, zo stellen zij, is dat traditionele vormen van theater heruitgevonden werden. Hans-Thies Lehmann schreef een invloedrijke verhandeling over zulke verschuivingen. In zijn boek *Postdramatic Theatre* analyseerde hij dat de theaterpraktijk in de tweede helft van de twintigste eeuw brak met traditionele vormen van theaterproductie, die hij als dramatisch karakteriseert. Hij beargumenteert dat deze verschuiving plaatsvond als gevolg van bepaalde politiek-historische veranderingen die hij beziet in het kader van cultuurwetenschappelijke

reflecties op het postmodernisme. In dit proefschrift gebruik ik Lehmann's idee van een 'postdramatisch theater' als een heuristisch middel om theatraliteit in het rechtenveld te bestuderen. Dat wil zeggen dat ik het bezie als concept dat kan worden gebruikt voor meer dan alleen de studie van theaterproducties en artistieke performances. Dat stelt me in staat om de logica van de vormen die Lehmann onder de noemer van 'postdramatisch theater' contrasteert met 'dramatisch theater' te vertalen en te gebruiken in de context van een analyse van juridische gebeurtenissen en instituties. Daarmee stel ik de vraag welke nieuwe theatrale vormen zich in onze tijd zijn gaan presenteren op, of zijn gaan interveniëren in, het juridische toneel.

De relatie tussen theater en drama, zo betoogt Lehmann, werd altijd voor lief genomen, alsof die 'natuurlijk' was. Hetzelfde geldt, stel ik, in beschouwingen over het juridisch theater, dat altijd is bezien als een dramatisch theater. Maar als die relatie in de postmoderne tijd uitgedaagd werd als gevolg van bepaalde politiek-historische en mediale veranderingen waar Lehmann in zijn boek op wijst, dan stel ik in mijn proefschrift voor dat diezelfde politiek-historische en mediale veranderingen hun stempel hebben gedrukt op het juridisch theater. De vraag die zodoende rijst is hoe die stempel, die in de praktijk van theaterproductie de vorm nam van wat Lehmann postdramatisch theater noemt, er precies uitziet in de context van het recht. Mijn proefschrift is zodoende niet alleen een studie naar de theatraliteit van het recht, maar tracht die theatraliteit te bestuderen als iets dat in onze tijd getart wordt door postdramatische interventies die de breuklijnen van het traditionele, dramatische juridisch theater blootleggen. Daarmee is dit proefschrift een poging om de legitimiteitscrisis waarmee het recht zich geconfronteerd ziet te analyseren in haar theatrale aard.

Het proefschrift richt zich op vier juridische gebeurtenissen – twee casus die tot stand kwamen in de context van de ontwikkeling van twee nieuwe juridische instituties en twee rechtszaken die gevestigde juridische instituties uitdaagden – waarin de breuklijnen van het traditionele, dramatische juridisch theater zichtbaar worden. Die worden zichtbaar door vier verschillende facetten die zich laten definiëren als de facetten van ruimte, lichamelijkheid, media, en genre. Die vier uitdagingen vormen de vier hoofdstukken van het proefschrift. Ze bevatten de verschillende wijzen waarop ik, zonder dat ik daarmee pretendeer volledig te zijn, de volgende vraag stel: ziet het juridisch theater zich vandaag de dag in toenemende mate geconfronteerd met een postdramatische logica die haar constitutieve vormen tart en ondermijnt?

In elk van de hoofdstukken combineer ik de analyse van een rechtszaak of juridische institutie met een lezing van een culturele tekst die daarop reageert – een architectonisch ontwerp, een museale tentoonstelling, een film, en twee toneelstukken. Elk van deze teksten fungeert als een supplement bij het juridische object van analyse en wijst mijns inziens op een blinde vlek daarin, of op vragen die onbewust worden gesteld. Het proefschrift is zodoende een oefening in het kruislings lezen van het recht 'met' culturele teksten, waarbij de culturele teksten dus niet gezien worden als slechts representaties van het recht, maar als teksten die ons in staat stellen een dimensie van het recht te bestuderen die anders over het hoofd gezien zou worden.

Hoofdstuk één gaat over het architectonisch ontwerp van het nieuwe permanente onderkomen voor het Internationaal Strafhof (ICC) in Den Haag. Gerechtsgebouwen tonen in hun ontwerp traditiegetrouw tekens en symbolen van soevereine macht, de machtsvorm waarin juridische instituties normaliter bestaan, daarbij gebruik makend van de ruimtelijke conventies van dramatisch theater. Echter, het Internationaal Strafhof poogt als instituut actief weerstand te bieden aan de logica van soevereiniteit. Het Hof werd gevestigd op basis van een multilateraal verdrag, het Statuut van Rome, en ontleent haar jurisdictie aan de vrijwillige participatie van staten in dat verdrag. Het ICC heeft de openheid van haar gestel iconografisch gezien gevangen in een ontwerp dat wordt gekenmerkt door een verticale tuin die het hoofdgebouw van het Hof omkleed. Het idee was om er zaailingen te laten groeien van elk van de lidstaten van het Hof. In het eerste hoofdstuk daagt deze thematisering van de tuin uit tot reflectie op de relatie tussen de tuin als een *topos* die traditioneel gezien als aanvulling dient bij gebouwen die macht representeren, d.w.z. op de relatie tussen tuinieren, het creëren van orde in de natuur door cultivering, en soevereine macht, welke ik in het hoofdstuk karakteriseer als een macht die dramatisch is van vorm. Maar, vanwege de specifieke vorm van de hangende tuinen van het ICC – de planten schieten geen wortel in de volle grond, maar worden gegroeid in potten die kunnen worden verwijderd – lees ik dit element als een interventie in die relatie, tussen de tuin als *topos* en dramatische soevereine macht, om daarmee een symbool te tonen voor de mogelijkheid en de belofte van een meer procesmatige, democratische, en openlijk kwetsbare constitutie.

Ook hoofdstuk twee reflecteert op de internationale rechtsorde, maar stelt vragen over de voorwaarden waaronder zo'n internationale multilaterale overeenkomst als het Statuut van Rome kan worden opgesteld. Staten kunnen alleen participeren als ze in de eerste plaats door

de internationale orde worden erkend als soevereine staten. Erkenning, immers, maakt een politieke formatie tot een *internationaal persoon*, welke categorie ik analyseer in termen van dramatisch theater. Het hoofdstuk beschouwt een Haags museum, het Yi Jun Peace Museum, dat eer betoont aan de Koreaanse diplomaat, Yi Jun. Yi Jun stierf tijdens zijn missie om toegang te krijgen tot de Tweede Haagse Vredesconferentie in 1907, terwijl de deelnemende staten hadden besloten Japan – sinds kort de koloniale machthebber op Koreaans grondgebied – te erkennen als Korea's vertegenwoordiger aan de onderhandelingstafel. Enerzijds functioneert het Yi Jun Peace Museum als een diplomatische onderneming die, net als een ambassade, het soevereine bestaan van Korea als natie representeert. Dat doet het museum om de historische miskenning van Korea als zodanig te corrigeren en om het belang van erkenning te benadrukken in de hedendaagse internationaal-politieke omstandigheden; een erkenning die gebaseerd is op de dramatische vorm. Anderzijds stel ik dat de nadruk die het museum legt op het fysieke bestaan van de diplomaat, op lichamelijkheid in het algemeen, en op het gegeven van de locatie van het museum – de plek waar het traumatische sterven van Yi Jun plaatsvond – kritische vragen opwerpt over de dramatische vorm van de internationale orde. Met die nadruk op lichamelijkheid, zo beargumenteer ik, werpt het museum een ervaring van kwetsbaarheid op midden in het veld van internationale betrekkingen, waarmee het de dramatische structuur daarvan openstelt voor een postdramatische gevoeligheid.

Hoofdstuk drie gaat over de botsing die plaatsvindt wanneer de traditionele mediale vormen van theater geconfronteerd worden met een nieuw medium: het computationele. Het juridisch theater is altijd begrepen als een die door woord en beeld gemedieerd is, zoals bijvoorbeeld in beschouwingen daarop van Pierre Legendre, Cornelia Vismann, Peter Goodrich, en Shoshana Felman, die ik in mijn proefschrift bespreek. Echter, steeds vaker dringen nieuwe vormen van bewijsvoering de gerechtshoven binnen. In hoofdstuk drie bespreek ik het beruchte infanticide-proces van Lucia de Berk, waarin probabilistische vormen van redeneren een beslissende rol speelden, alsook het discours van experts die werden geïntroduceerd om die van toelichting te voorzien, namelijk statistici, toxicologen, en psychiaters. Zowel die vorm van bewijsvoering als het discours van experts verstoorden het juridisch theater, en de zaak leidde derhalve tot tegenstrijdige uitkomsten: hij werd eerst gezien als een van de zwaarste strafprocessen in de geschiedenis van het Nederlandse strafrecht, en daarna als een van de ernstigste gerechtelijke dwalingen. De verdachte kreeg eerst een van de zwaarst mogelijke vonnissen, een combinatie van levenslange gevangenisstraf en terbeschikkingstelling (tbs) met dwangverpleging, maar werd later vrijgesproken, niet omdat er geen bewijs was voor

haar schuld, maar omdat helemaal niet aantoonbaar kon worden gemaakt dat er misdaden waren gepleegd. Het publiek was en is ook verdeeld over de zaak, en blijft zich afvragen of De Berk een onschuldig slachtoffer was van een elitair, patriarchaal rechtssysteem, of een sluwe dader die ons allemaal te slim af was en wegkwam met gruwelijke daden. De zaak 'Lucia de Berk' lijkt zich niet te willen oplossen op een manier die sluitend is, onomstotelijk; die uitkomst schrijf ik in hoofdstuk drie toe aan het effect dat de kansberekening, vanwege haar mediale aard, en het discours van experts, vanwege hun wetenschappelijke aard, op de zaak hadden.

Waar de zaken die ik in de eerste twee hoofdstukken bestudeer een postdramatische artistieke interventie pleegden in de juridische sfeer, is het in hoofdstuk drie zo dat de juridische sfeer zelf met postdramatische elementen lijkt te zijn doordrongen geraakt. Het hoofdstuk bevat zodoende ook een verschuiving in het perspectief van dit proefschrift op de relatie tussen (post)dramatisch theater en recht. Waar de vormen van postdrama als het ware 'gevierd' werden in de eerste twee hoofdstukken, vanwege hun politieke potentieel om beperkende juridische instituties te ontwrichten en opnieuw te bezien, is hoofdstuk drie gevoelig voor de onmogelijkheid om te leven in een wereld die structureel ontwricht is, en voor de culturele strategieën die zo'n wereld ontlokt om met die ontwrichting om te gaan. In die context is het relevant dat het De Berk proces waarover hoofdstuk drie gaat ook leidde tot artistieke reacties; vooral een toneelstuk, *Lucy, Een monsterproces* (Hans van Hechten, 2008; 2018), en een film, *Lucia de B.* (Paula van der Oest, 2014). Het toneelstuk en de film lijken het tegenovergestelde te willen doen van de kunstwerken die ik bespreek in hoofdstuk een en twee, het architectonisch ontwerp en de tentoonstelling in het Yi Jun Peace Museum. In plaats van te willen ontzetten, te ondermijnen, en nieuwe vormen te zoeken in reactie op de beperkingen van de dramatische vormen, beogen het toneelstuk en de film een ondermijnde, ontzette zaak weer terug te gieten in een coherent vertelkader, in de vorm van een dramatisch plot. Op basis van mijn analyses van de kunstwerken stel ik voor dat wanneer rechtszaken *zelf* postdramatisch worden, kunst tracht een herdramatisering van de zaak teweeg te brengen, poogt orde en een gevoel van maatschappelijke solidariteit te herstellen. In hoofdstuk drie begin ik de mogelijkheden van dit verlangen naar herdramatisering te verkennen. In relatie tot het De Berk-proces blijft de vraag of de kunstwerken een sluitende herdramatisering teweeg kunnen brengen, gegeven de open, besluiteloze structuur en logica van de postdramatische vorm die de zaak plaagde.

Hoewel hoofdstuk vier zich met een andere problematiek bezighoudt, vervolg ik er mijn beschouwingen op dit laatste vraagstuk: het verlangen naar drama, of herdramatisering, in een maatschappij die wordt geregeerd door een rechtsorde die in toenemende mate door postdramatische elementen wordt doordrongen. In hoofdstuk vier reflecteer ik op een rechtszaak waarin het schijnbaar onmogelijk bleek iets wat op een 'daad' leek vast te stellen, de daad zijnde een fundamenteel generiek aspect van drama als symbolische vorm, aangezien die nodig is om een plot te construeren, en een voorwaarde voor het houden en besluiten van een rechtszaak. In de zaak die ik in hoofdstuk vier bespreek, de Franse *Affaire du sang contaminé*, de 'Besmette bloedaffaire', liet een aantal politieke, medische, en zakelijke gezagsdragers de nationale bloedvoorzieningen besmet raken met hiv in het Frankrijk van begin jaren tachtig, vanwege bepaalde politiek-economische overwegingen. Zodoende stelden zij de bevolking bloot aan het risico om aids op te lopen, en in het bijzonder mensen die afhankelijk waren van bloedtransfusies, of van bloed vervaardigde medicijnen, zoals hemofiliepatiënten. In de behandeling van de zaak bleek dat geen van de handelingen van de betrokkenen kon worden gezien als een 'daad' die op dit resultaat bedacht was. Derhalve werden zij niet voor het gerecht gedaagd voor misdaden zoals vergiftiging of doodslag – daden die recht hadden gedaan aan het feit dat er veel levens verloren gingen – maar met overtredingen als 'fraude' en het 'nalaten hulp te verlenen aan iemand in hulpeloze toestand', waarvoor de strafmaat aanzienlijk lager ligt.

Met verwijzingen naar Michel Foucault's concept van biomacht en bestuurlijkheid en Lauren Berlant's reflecties hierop, neem ik in hoofdstuk vier de 'Besmette bloedaffaire' als voorbeeld voor de manier waarop de hedendaagse maatschappij gestructureerd wordt door vormen van handelen die niet langer begrepen kunnen worden als dramatisch, wat wil zeggen, voortkomend uit de intenties van een individu. In plaats daarvan lijkt handelen in het hedendaagse steeds meer de vorm te nemen van een bepaalde passiviteit die kan worden begrepen als on- of postdramatisch. Het hoofdstuk beschouwt een toneelstuk dat werd geschreven en geproduceerd naar aanleiding van de affaire, Hélène Cixous' *The Perjured City*, als een kunstwerk dat de vraag oproep of dit gegeven niet alleen het sluitende vermogen van het juridisch theater verstoort, maar ook het vermogen en de vorm van politiek theater als een manier om te reageren op onrechtvaardigheid. Het toneelstuk verstrekt uiteindelijk een vorm van 'zorg' ('care') meer dan een 'oplossing' ('cure') voor de problemen die in de 'Bloedaffaire' ontstonden, maar de vraag die rest is wat die zorg behelst, wat het betekent voor onze hedendaagse maatschappij en haar mogelijkheid om op juridisch-theatrale wijze om

te gaan met het feit dat wat Lehmann nog karakteriseerde als de uitzonderlijke, gebeurlijke aard van postdrama, het nieuwe ‘normaal’ lijkt te zijn geworden.

Curriculum Vitae

Tessa de Zeeuw was born on May 3, 1990, in Pijnacker, The Netherlands, and finished her primary education there in 2001. She obtained a VWO certificate from the Marnix Gymnasium in Rotterdam in 2007, after having spent a year at Reeds School in Cobham, UK, in 2002. She next pursued a BA in Liberal Arts and Sciences at University College Utrecht, with a major in the Humanities, which she completed *cum laude* in 2010. During her BA, she spent a semester abroad at Monash University in Melbourne, Australia, in 2009. After a year and a half spent travelling, learning about Permaculture, and working for room, board, and the exchange of knowledge on organic farms in both Australia and the Netherlands, she took courses in the Leiden University department of Film and Literary Studies by way of a pre-master bridging program. She obtained an MA degree, *cum laude*, from the Media Studies: Comparative Literature and Literary Theory program in 2013. In that same year she enrolled to study Law at Utrecht University, while also preparing a proposal for PhD research. She obtained a BA in Law in 2015, as well as a PhD position at the Leiden University Centre for the Arts in Society (LUCAS), in the Graduate Program 'Arts in Society', funded by the Dutch National Research Council (NWO). Her project, supervised by Prof. dr. Frans-Willem Korsten and Dr. Yasco Horsman, was to have a special focus on the combination of law and literature. Since September 2019 she has been working as a lecturer in the Leiden University department of Film and Literary studies, teaching in the BA Film and Literary Studies, the MA Media Studies, and at Leiden University College. She has published articles on predictive policing (*Legibility in the Age of Signs and Machines*, 2018), on the theatrical architecture of the International Criminal Court (*JLGC*, 2019), and on a poem by Judith Herzberg (*Vooys*, 2018), and, together with Frans-Willem Korsten, on imagined trials between humans and animals (*Law and Literature*, 2014), and on theatricality and the desire for justice in Peter Greenaway's film *The Cook, The Thief, His Wife, and Her Lover* (*Pólemos*, 2016).